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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ALEXANDRA MARCHUK,

4 Plaintiff,

5 v.

13 CV 1669 (AKH)

6 FARUQI & FARUQI, LLP, et al.,

7 Defendants.

8 -----x

9 February 3, 2015

10 10:30 A.M.

11 Before:

12 HON. ALVIN K. HELLERSTEIN,

13 District Judge

14 APPEARANCES

15 ROTTENBERG LIPMAN RICH, PC

16 Attorneys for Plaintiff

17 BY: HARRY W. LIPMAN

18 JONATHAN S. HERSHBERG

THOMAS E. CHASE

19 BURSOR & FISHER, PA

Attorneys for Defendants

20 BY: SCOTT A. BURSOR

21 NEAL J. DECKANT

22 YITZCHAK KOPEL

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1 (Trial continuing)

2 (Jury not present)

3 THE DEPUTY CLERK: All rise.

4 THE COURT: Good morning, all. Be seated.

5 I have distributed a revised version of the proposed
6 charge to counsel. I'm marking this one, I think it is five,
7 court exhibit five. And a revised verdict form, which I'm
8 marking court exhibit six.

9 Not all of the points that you wanted yesterday, Mr.
10 Lipman, have been put in, as you have probably noticed.

11 MR. LIPMAN: I have not noticed yet.

12 THE COURT: Well, the Ellerth and Faragher defenses
13 have not been put in for Mr. Monteverde. And I think you may
14 have wanted that, I'm not sure. You also wanted a charge for
15 the City law that dealt with a nonvicarious liability for the
16 law firm, and I didn't give that.

17 MR. LIPMAN: Did not?

18 THE COURT: Did not.

19 MR. LIPMAN: Plaintiff objects to that.

20 THE COURT: Objection is noted.

21 Are there any other objections you have on this?

22 I have distributed this in advance so you could know
23 if there is anything you wanted to object to.

24 MR. LIPMAN: Well, we only got it about -- Judge, we
25 got it one minute ago.

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1 THE CLERK: Right now.

2 THE COURT: Sorry. I'm sorry, Mr. Lipman. Go ahead.

3 MR. LIPMAN: Thank you.

4 THE COURT: The only changes are in the substantive
5 part. Starts on page 7 and continues through page 20. But
6 there were no changes in the damages section. Except for on
7 the first page of the damages section.

8 MR. LIPMAN: Judge, at the bottom of page 8.

9 THE COURT: Yes.

10 MR. LIPMAN: The instruction says, "If you find that
11 Faruqi & Faruqi proved by a preponderance of the evidence that
12 it had procedures that reasonably could have prevented
13 discriminatory behavior and Ms. Marchuk failed to take
14 advantage," I think that you need the word "unreasonably"
15 failed to take advantage in there.

16 THE COURT: I'll add "unreasonably."

17 MR. BURSOR: Where is that?

18 THE COURT: First word on page 9.

19 MR. LIPMAN: Judge, claim four, page 13. I mean there
20 are two other factors here that would, if found by the jury,
21 make the entity liable.

22 THE COURT: Those are the points you wanted yesterday
23 having to do with negligence and supervision. I --

24 MR. LIPMAN: Not merely negligence. I think it is a
25 reckless standard.

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1 THE COURT: I'm not giving that, because we're dealing
2 with vicarious liability. So if Mr. Monteverde is found liable
3 and he is found to be a supervisor, then the law firm is
4 liable.

5 MR. LIPMAN: But if the jury finds that the law firm
6 knew about his behavior, but did nothing to prevent it or -- or
7 curb it, the law firm is liable.

8 THE COURT: Even though the supervisor is not. Is
9 that what you are saying?

10 MR. LIPMAN: Yes.

11 THE COURT: We don't have that situation.

12 MR. LIPMAN: Well, we do, Judge.

13 THE COURT: It's not part of this case, and I'm not
14 charging it.

15 MR. LIPMAN: Judge, we have --

16 THE COURT: Your objection is noted. Your objection
17 is noted.

18 Up to this point, do you have any comments,
19 Mr. Bursor?

20 MR. BURSOR: Your Honor, the only comment that I have
21 up to this point is one you have ruled on already, which I
22 think, is based on the DeWitt case by Judge Scheindlin. And I
23 think the law is that --

24 THE COURT: Your objection is noted, carried over from
25 the previous session.

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1 MR. LIPMAN: Judge, on page 20, with regard to
2 punitive damages in the last paragraph, we would again urge the
3 Court to --

4 THE COURT: We went through, that fully. I'm not
5 changing it.

6 MR. LIPMAN: I would just ask the Court to add the
7 word "immediately" Determined, so that the jury --

8 THE COURT: No, it is staying the way it is.

9 MR. LIPMAN: -- does not feel daunted by the task.

10 THE COURT: Should stay the way it is.

11 Okay, anything else?

12 Let's call the jury.

13 Who is going to be your first witness in rebuttal?

14 MR. LIPMAN: Brian Moon, your Honor.

15 THE COURT: Get him out.

16 MR. BURSOR: You said you had court exhibit number 6,
17 revised verdict form. We have not seen that.

18 MR. LIPMAN: The only revision was to the third point,
19 right, that was separated into A and B; is that right?

20 THE COURT: I think that's right. And the lines are
21 made eight spaces each.

22 THE DEPUTY CLERK: All rise.
23
24
25

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1 (In open court)

2 (Jury present)

3 THE COURT: Good morning, ladies and gentlemen. I'm
4 glad to see you are all well and alert after the long break,
5 and the snow and ice storms that have engaged us all.

6 Please be seated, everyone.

7 I have had a number of meetings with the lawyers to go
8 over issues of law. We have resolved them. And there is going
9 to be a short rebuttal by the plaintiff. There will be two
10 witnesses. Brian Moon is on the witness stand now. He will be
11 very short. And then followed by Ms. Marchuk to deal, in
12 rebuttal, with some information that she did not cover in her
13 direct examination.

14 I have ruled that that rebuttal has to be focused only
15 on that which came up in the opposition case, in defendant's
16 case, that could not be anticipated and was not covered.

17 So we'll swear Mr. Moon now as a witness. Pay
18 attention to oath, please.

19 THE DEPUTY CLERK: Raise your right hand. State your
20 full name and spell your last name.

21 THE WITNESS: Brian Thomas Moon, M-O-O-N.

22 THE COURT: And Brian is B-R-I-A-N?

23 THE WITNESS: That is correct.

24 BRIAN MOON,

25 called as a witness by the Plaintiff,

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1 having been duly sworn, testified as follows.

2 THE COURT: You may inquire, Mr. Chase.

3 MR. CHASE: Thank you, Judge.

4 DIRECT EXAMINATION

5 BY MR. CHASE:

6 Q. Good morning, Mr. Moon. Can you tell us where you went to
7 college?

8 MR. BURSOR: Objection.

9 THE COURT: Overruled.

10 A. Columbia.

11 Q. Did you go to law school?

12 A. I did.

13 Q. And what law school?

14 A. NYU.

15 Q. And what year did you graduate from NYU?

16 A. 2007.

17 Q. And where did you work after graduation?

18 A. Started at Shearman & Sterling.

19 Q. And how long were you there?

20 A. About two years.

21 Q. And did there come a time when you joined Faruqi & Faruqi?

22 A. There was.

23 Q. When did you join Faruqi & Faruqi?

24 A. About May of 2011.

25 Q. And what type of work did you do at Faruqi & Faruqi?

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Moon - direct

1 A. Mergers and acquisitions litigation.

2 Q. And did you work with Mr. Monteverde?

3 A. Yes, I did.

4 Q. And who were you assigned to, primarily, at Faruqi &
5 Faruqi?

6 A. Juan.

7 THE COURT: Mr. Monteverde?

8 THE WITNESS: That's correct.

9 Q. And was that assignment formalized in any way -- or when
10 did you learn that you were assigned to him?

11 A. I can't recall specifically if it was immediately before
12 being hired, or immediately after being hired. But I believe
13 it was communicated to me that I would be working with Juan
14 pretty much exclusively.

15 THE COURT: Mr. Monteverde.

16 THE WITNESS: Sorry. Mr. Monteverde exclusively.

17 BY MR. CHASE:

18 Q. And how long did you work for Mr. Monteverde?

19 A. Until the end of December, 2012.

20 Q. And is that when you left the firm?

21 A. That's correct.

22 Q. And did you have an understanding of Mr. Monteverde's role
23 at the firm?

24 MR. BURSOR: Objection.

25 THE COURT: Overruled.

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Moon - direct

1 MR. BURSOR: Objection.

2 A. I believed I did.

3 Q. And can you tell us what your understanding was?

4 A. He was a partner and head of the mergers and acquisitions
5 group.

6 Q. And was it your understanding that he was an influential
7 partner?

8 A. Yes, it was.

9 Q. And what was that based on?

10 A. A lot of it was based on Mr. Monteverde's own statements
11 that he was. As well as sort of general conversations with
12 other people in the firm indicating that he was.

13 Q. And what kind of statements did he make indicating that he
14 was an important partner at the firm?

15 A. He would often say that he was making the most money, or
16 the only money, for the law firm. And that -- and that's
17 basically what it amounted to.

18 Q. Did he indicate to you that he was keeping the firm afloat?

19 A. Yes, he did.

20 Q. Did Mr. Monteverde instruct other partners not to give you
21 work?

22 A. Yes, he did.

23 Q. And was he territorial about who you worked for?

24 THE COURT: How do you know --

25 MR. BURSOR: Objection.

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Moon - direct

1 THE COURT: Sustained.

2 How do you know he said anything that he mentioned to
3 other partners.

4 THE WITNESS: I believe I witnessed, at least on one
5 occasion, him calling another partner, Adam Gonnelli, on the
6 phone when I was there, saying not to give me work.

7 Q. And did you understand from Mr. Faruqi and Ms. Faruqi that
8 you were to work primarily for Mr. Monteverde?

9 A. Certainly from Mr. Faruqi.

10 THE COURT: Mr. Chase, ask questions that will elicit
11 competent testimony, not hearsay.

12 MR. CHASE: Okay.

13 Q. Did you believe that if you were unhappy working for
14 Mr. Monteverde you could be --

15 THE COURT: Objection sustained.

16 Did there come a time when you had a conversation with
17 either of the Faruqis having to do with where you would work in
18 the firm?

19 THE WITNESS: Yes.

20 THE COURT: When.

21 Can you ask questions that way?

22 THE WITNESS: I believe that -- that it was, again,
23 either shortly before I was hired or immediately after I was
24 hired, Mr. Faruqi indicated to me that I would be working with
25 Mr. Monteverde.

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Moon - direct

1 THE COURT: In or about May of 2011?

2 THE WITNESS: That is correct.

3 BY MR. CHASE:

4 Q. Did you ever attend hearings in Delaware with
5 Mr. Monteverde?

6 A. No, I did not.

7 Q. Did you ever ask to attend hearings in Delaware with
8 Mr. Monteverde?

9 A. I believe I did, indirectly.

10 Q. You believe you did. Indirectly, did you say?

11 A. Yes.

12 Q. And can you elaborate what you mean?

13 A. I recall a time when I noted that Ms. Marchuk had attended
14 a couple of hearings in Delaware soon after starting. And I
15 was starting work at the firm. And I was surprised that she
16 had, so quickly, been invited to attend a hearing. And so I
17 recall making some sort of comment to Mr. Monteverde indicating
18 that I was surprised that she had, and meant to imply, you
19 know, would I be invited to also attend court hearings with
20 him.

21 THE COURT: What did he say?

22 THE WITNESS: I don't recall the specific words, but I
23 do recall that he, Mr. Monteverde, sort of barked up what I
24 perceived to be a harsh response that took me aback.

25 THE COURT: What did he say?

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Moon - direct

1 THE WITNESS: I don't recall the words, I just --

2 THE COURT: Was it, in substance, no?

3 THE WITNESS: I -- yes. I took it as a no, for the
4 time being, or -- or a deflection of the question.

5 THE COURT: Pardon?

6 THE WITNESS: Or that he was dismissing my question.

7 THE COURT: Well, what did he say to dismiss your
8 question?

9 THE WITNESS: I don't recall what he said. I just
10 recall my own feeling of being surprised that Mr. Monteverde
11 had reacted in a strong way when I thought I had been showing
12 enthusiasm to, you know, participate in substantive work.

13 BY MR. CHASE:

14 Q. And in any event, did you ever go to Delaware?

15 A. No, I did not.

16 Q. Did you ever get invited on Mr. Monteverde's boat?

17 A. Not really, no.

18 Q. What do you mean, "not really?"

19 A. He talked about his boat a lot and, you know, talked about,
20 you know how he, you know in sort of an abstract way, would
21 like to have people on his boat. But I never received an
22 actual invitation.

23 Q. Who was Andrea Nash at Faruqi & Faruqi?

24 THE COURT: Are you going beyond the subjects
25 discussed?

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Moon - direct

1 MR. CHASE: Excuse me?

2 THE COURT: Are we going beyond the subjects we
3 discussed.

4 MR. CHASE: No, your Honor. This is absolutely what
5 we discussed.

6 A. Andrea Nash was an associate of the firm. She started at
7 about the same time that I did.

8 Q. And do you have an understanding why she left the firm?

9 A. Yes.

10 Q. And what is that understanding based on?

11 A. A conversation that I had with Mr. Monteverde.

12 Q. And what did Mr. Monteverde tell you about why Ms. Nash
13 left the firm?

14 A. He told me that he had fired her.

15 Q. And did he take you out to lunch and have a discussion with
16 you around that time?

17 A. Yes, he did.

18 Q. And what did he discuss with you at that lunch?

19 A. My recollection is that, shortly after Ms. Nash left the
20 firm, that Mr. Monteverde took me out to lunch and specifically
21 told me that he was taking me out to lunch to reassure me that,
22 you know, even though he had fired Ms. Nash, that he felt that
23 it was necessary to do so, and that he was meaning to, you
24 know, comfort me in case I had any concerns about my own job
25 security, given that Ms. Nash and I had started work at about

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Moon - direct

1 the same time.

2 Q. Was it your belief at that time that Mr. Monteverde had the
3 ability to terminate you?

4 A. Yes, I did.

5 Q. Did anybody at the firm ever indicate to you that if you
6 wanted to work in a different department, you could?

7 A. No.

8 Q. Did Mr. Faruqi or Ms. Faruqi ever indicate to you that if
9 you were unhappy with the workplace, or had any concerns with
10 the workplace, you should express those concerns to them?

11 A. I recall one firm meeting, towards the end of my tenure
12 there, when Ms. Faruqi did say something like that.

13 Q. Well, did you believe that if you expressed your concern
14 about working for Mr. Monteverde, they would take action with
15 respect to those --

16 THE COURT: Sustained.

17 Q. Did there come a time that Ms. Marchuk came and joined the
18 firm while you were there?

19 A. Yes.

20 Q. And who did Ms. Marchuk work for? When she joined the
21 firm.

22 A. Mr. Monteverde.

23 Q. And how did you know that?

24 A. Mr. Monteverde told me, in advance of her arrival, that she
25 would be joining his team. And that came to pass when she

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Moon - direct

1 actually did join.

2 Q. Were you told that she would be replacing Ms. Nash?

3 A. Yes.

4 Q. And what was Ms. Marchuk's office demeanor like?

5 A. Professional.

6 Q. Do you recall, at all, Ms. Marchuk following Mr. Monteverde
7 around the office?

8 A. No.

9 Q. Do you recall her flirting with Mr. Monteverde, at all?

10 A. No.

11 Q. Did she excessively or inappropriately laugh at his jokes?

12 A. No.

13 Q. Did you attend the holiday party at the end of 2011?

14 A. I did.

15 Q. And do you recall Ms. Marchuk following Mr. Monteverde
16 around at the holiday party?

17 A. No, I don't recall that.

18 Q. Do you recall her acting flirtatiously toward
19 Mr. Monteverde at the holiday party?

20 A. No, I don't recall that.

21 Q. When you and Ms. Marchuk would speak in the office, did
22 Mr. Monteverde interject himself at all in these conversations?

23 A. Yes, he would do that.

24 THE COURT: Overruled.

25 Q. And what -- can you elaborate?

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Moon - direct

1 A. I recall, on several occasions, and on enough occasions
2 that I noted this. If Ms. Marchuk and I were very briefly
3 engaged in a casual conversation, you know, like co-workers,
4 Mr. Monteverde would sort of appear from seemingly nowhere and
5 interject himself and say, you know, what are you talking about
6 or something along those lines.

7 Q. And did you go out to lunch with Ms. Monteverde after she
8 started at the firm?

9 MR. BURSOR: Objection.

10 THE COURT: Ms. Marchuk.

11 MR. CHASE: Ms. Marchuk, sorry.

12 A. Yes. Yes, I did.

13 Q. And what do you recall about that lunch?

14 A. I recall us going out to lunch because she had recently
15 started in the same group as me, and me wanting to be friendly.
16 And I recall her telling me about what I considered to be a
17 disturbing episode that she had told me had happened when she
18 recently started working.

19 Q. What was that episode?

20 A. From what I recall, she told me that she had attended a
21 hearing in Delaware with Mr. Monteverde. I believe it was
22 within the first few days that she was at the firm. And that
23 on the return trip, Mr. Monteverde wanted to drink alcohol on
24 the train. And that he also wanted to go out for drinks at a
25 bar after arriving in New York. And that the two did drink.

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1 And that Mr. Monteverde kissed her.

2 Q. Did Ms. Marchuk indicate to you in that conversation
3 whether that advance was welcome or unwelcome?

4 A. She didn't use the exact word, but I believe the whole
5 context of the conversation was that it was unwelcome.

6 Q. Unwelcome?

7 A. Yes, that's correct.

8 THE COURT: What did she say about it?

9 THE WITNESS: She sounded concerned about, you know --

10 THE COURT: Try to remember the words or substance of
11 what she said, rather than your own characterizations.

12 THE WITNESS: What I recall was that Ms. Marchuk made
13 a casual comment in the middle of the conversation in response
14 to something I had said saying -- I think she said Juan had
15 something else in mind for me. And I didn't register that she
16 had said that, or that that meant anything. And I kept
17 speaking with her further. And then she started to tell me
18 different episodes. I think she told me about how when she was
19 a summer associate, the prior summer, Mr. Monteverde had said
20 to her --

21 MR. BURSOR: Objection.

22 THE COURT: Sustained. We're going beyond the scope.

23 THE WITNESS: Okay.

24 THE COURT: No, now stop.

25 THE WITNESS: Pardon me?

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Moon - direct

1 THE COURT: Stop.

2 THE WITNESS: Okay.

3 BY MR. CHASE:

4 Q. At that time, after learning that information, did you feel
5 comfortable going to Mr. Faruqi or Mrs. Faruqi and expressing
6 your concerns about the workplace?

7 MR. BURSOR: Objection.

8 THE COURT: Sustained.

9 I think we're finished with the scope of what we --
10 right, Mr. Chase?

11 MR. CHASE: No, I have a couple of more questions,
12 your Honor, about the environment at the firm. I think we
13 discussed it.

14 THE COURT: You have covered it. You have covered it.
15 What more do we need?

16 MR. CHASE: Well, the hostile work environment in a
17 larger sense.

18 THE COURT: I don't recall that. Step up to the
19 sidebar.

20 (Continued on next page)

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Moon - direct

1 (At the side bar)

2 THE COURT: Where are we going, Mr. Chase?

3 MR. LIPMAN: Sexual comments Mr. Monteverde made
4 repeatedly to him, and to the others, in the office, regarding
5 strippers, blow jobs, other sexual jokes. Sexual partners.
6 Hostile work environment type of testimony, your Honor. We
7 discussed it yesterday.

8 MR. BURSOR: He testified at his deposition he never
9 once saw or heard Mr. Monteverde make any sexual jokes or
10 comments in the presence of Ms. Marchuk.

11 THE COURT: You can bring that out.

12 MR. BURSOR: He said he didn't know --

13 THE COURT: He can ask.

14 You can ask.

15 MR. BURSOR: -- in any event.

16 (Continued on next page)

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Moon - direct

1 (In open court)

2 BY MR. CHASE:

3 Q. Mr. Moon, did you witness Mr. Monteverde making jokes or
4 comments of a sexual nature while you worked at Faruqi &
5 Faruqi?

6 A. I did.

7 Q. And what kind of jokes?

8 THE COURT: When and where.

9 THE WITNESS: Throughout my entire time at the firm,
10 in the office, at a local bar that Mr. Monteverde often invited
11 people to join him.

12 THE COURT: Is that Lex Bar?

13 THE WITNESS: That's correct. And also --

14 THE COURT: Stay with the firm. How about inside the
15 firm?

16 THE WITNESS: Yes, I recall hearing Juan making jokes
17 of a sexual nature in the office.

18 Mr. Monteverde. Excuse me.

19 BY MR. CHASE:

20 Q. Do you recall him commenting about his sex life in the
21 office?

22 A. I recall him commenting about his sex life, I don't --

23 THE COURT: You remember him commenting, in the
24 office, about his sex life. That's what you meant, right?

25 THE WITNESS: Right. I -- I recall him --

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1 THE COURT: Just a movement of a few words.

2 THE WITNESS: I have some recollection --

3 MR. BURSOR: Objection. I think he has answered the
4 question, your Honor. The answer was yes.

5 BY MR. CHASE:

6 Q. Can you tell us what you recall?

7 MR. BURSOR: Objection.

8 THE COURT: Wait a minute, wait a minute.

9 THE WITNESS: Pardon?

10 THE COURT: One minute.

11 Where and when. The question is, "What do you
12 recall?"

13 And before you answer that, where was it said and when
14 was it said. Then you can answer.

15 THE WITNESS: I believe it would have been in the sort
16 of common area where the paralegals and staff members sat in
17 the office, the open floor plan.

18 Time. You know, there were a series of episodes where
19 he would talk generally about things of a sexual nature. I
20 can't recall the specific time that I heard him talking about,
21 you know, mistresses or things of that nature, but I recall
22 hearing him talk about that in that environment.

23 Q. Did he discuss --

24 MR. BURSOR: Your Honor, I object to that. Move to
25 strike it.

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1 THE COURT: Overruled.

2 BY MR. CHASE:

3 Q. Did you discuss --

4 THE COURT: Did you understand these to be of a
5 boastful nature?

6 THE WITNESS: It was not entirely clear how I was
7 supposed to understand these comments.

8 THE COURT: He just said this?

9 THE WITNESS: Yes.

10 THE COURT: Sprinkling it through his speech?

11 THE WITNESS: Yes.

12 BY MR. CHASE:

13 Q. Did you ever provide similar anecdotes to him, is this part
14 of a give-and-take at all?

15 A. No, I did not.

16 Q. And were you sufficiently good friends or friendly with
17 Mr. --

18 THE COURT: Next question, next question.

19 BY MR. CHASE:

20 Q. Did you witness Mr. Monteverde commenting upon women's
21 physical appearance and attractiveness?

22 THE COURT: I think we have covered the area for
23 rebuttal. That's enough.

24 How many people were there, in the office,
25 approximately. Lawyers and staff.

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1 THE WITNESS: My recollection would have been
2 somewhere around 30.

3 THE COURT: And what was the division between men and
4 women, approximately?

5 THE WITNESS: I -- I feel like it would be something
6 of an even split.

7 BY MR. CHASE:

8 Q. Do you recall him making comments about --

9 THE COURT: Of your own view -- I'll let counsel ask
10 this, withdrawn.

11 Continue.

12 BY MR. CHASE:

13 Q. Do you recall Mr. Monteverde making comments about
14 strippers in the office place?

15 MR. BURSOR: Objection.

16 THE COURT: I'll allow this last one.

17 A. I recall him looking up websites for strippers in the
18 office.

19 Q. And how did you know that, or how did you come to learn
20 that?

21 MR. BURSOR: Objection.

22 THE COURT: Sustained.

23 All right, I think we have elicited enough. Anything
24 else?

25 MR. CHASE: Yes. One several quick final questions.

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Moon - direct

1 BY MR. CHASE:

2 Q. Do you recall jokes about the firm handbook at the firm?

3 A. I do.

4 Q. And what do you recall in that regard?

5 A. I would recall that Mr. Monteverde would often make jokes
6 of a sexual nature in some public place in the office, either
7 in a meeting, or just in that open floor plan, and say
8 something inappropriate. And Mr. Faruqi, as a way to sort of
9 get a punchline would underscore the inappropriateness of what
10 he had said by saying something like --

11 MR. BURSOR: Objection.

12 THE COURT: Instead of being discursive about it, who
13 said what, when, and where?

14 THE WITNESS: Okay.

15 Mr. Monteverde would make comments, either on the
16 office floor, or in a conference room, something of a sexual
17 nature. Mr. Faruqi would be there --

18 MR. BURSOR: Objection.

19 THE WITNESS: -- would hear it --

20 THE COURT: Overruled.

21 THE WITNESS: -- and would respond, "Handbook, Juan,
22 handbook." And then Juan --

23 THE COURT: What did you understand that to mean?

24 THE WITNESS: I took it as sort of a like a sit com
25 punchline, like isn't it funny that Mr. Monteverde is being

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Moon - direct

1 inappropriate, and --

2 THE COURT: You knew the handbook of the firm said
3 something about the appropriateness, or not, in an office
4 environment of coarse language?

5 THE WITNESS: Yes.

6 THE COURT: What was your understanding, whether it
7 was permitted or not, according to the handbook?

8 THE WITNESS: My understanding is that inappropriate
9 sexual conduct should not have been permitted in the office.

10 THE COURT: Including language to that effect?

11 THE WITNESS: That would have been my understanding,
12 yes.

13 THE COURT: And did you understand that when
14 Mr. Faruqi said what you said, he was referring to the
15 proscription in the handbook?

16 THE WITNESS: Right. That was my understanding.

17 THE COURT: So why did you think it was a joke.

18 THE WITNESS: The tone, and the timing, and the fact
19 that Mr. Monteverde's reaction would be to laugh. And that
20 Mr. Faruqi did not ever follow up with a statement to indicate
21 that he was actually serious and that it was not a joke. And.
22 Usually, this was eliciting laughter.

23 Q. Do you recall jokes about blow jobs when the subject of the
24 BJ Wholesale --

25 THE COURT: Objection sustained. We're finished with

F230mar1

Moon - direct

1 this.

2 MR. CHASE: Could I ask one final question, your
3 Honor?

4 THE COURT: I thought the last one was a final
5 question.

6 MR. CHASE: I said a couple.

7 THE COURT: Can I ask about his compensation, your
8 Honor?

9 MR. BURSOR: No. Objection.

10 THE COURT: Objection sustained.

11 Okay, what's next.

12 CROSS-EXAMINATION

13 BY MR. BURSOR:

14 Q. Good morning, Mr. Moon --

15 MR. CHASE: Can you wait a second?

16 MR. BURSOR: No, I'm ready to go.

17 THE COURT: No, wait a second.

18 MR. BURSOR: Pardon me?

19 THE COURT: Are you finished getting away from the
20 lecturn, Mr. Chase?

21 MR. CHASE: Barely, your Honor.

22 THE COURT: Go ahead, Mr. Bursor.

23 MR. BURSOR: May I approach?

24 THE COURT: You may.

25 MR. BURSOR: I'm providing the witness with exhibit

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Moon - Cross

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XX.

BY MR. BURSOR:

Q. Mr. Moon, do have exhibit XX?

A. I do.

Q. Have you seen it before?

A. I have.

Q. What is it?

A. It is a screenshot of my Facebook account messages, and it is a conversation with Ms. Marchuk.

MR. BURSOR: Defendants offer XX.

THE COURT: Conversation was December 23, 2011?

THE WITNESS: That's correct.

MR. CHASE: Objection, your Honor.

THE COURT: To what?

MR. CHASE: I think he moved it into evidence, is that right?

MR. BURSOR: Yes.

MR. CHASE: We object to it. It is outside of the scope, it's hearsay, it's not evidence.

THE COURT: Sustained.

BY MR. BURSOR:

Q. On December 23, did you learn that Ms. Marchuk was no longer at the firm?

A. Am I meant to be looking at this exhibit still?

THE COURT: You can look at it, or you can answer

F230mar1

Moon - Cross

1 independently.

2 A. Well, I don't recall the date independently of this
3 exhibit, but it looks like --

4 THE COURT: Then leave the exhibit alone.

5 Did there come a time when you learned that Ms.
6 Marchuk had withdrawn from the firm?

7 THE WITNESS: Yes.

8 Q. How did you learn that?

9 MR. BURSOR: Oh, I'm sorry your Honor.

10 THE COURT: I was going to ask when.

11 THE WITNESS: My recollection is that I learned this
12 some time after the 2011 holiday party.

13 BY MR. BURSOR:

14 Q. How did you get that knowledge?

15 A. From what I recall, Olive Alston made a comment indicating
16 that Ms. Marchuk would not be returning.

17 Q. How did you react?

18 A. I was startled and very surprised. And I then reached out
19 to Ms. Marchuk, via Facebook, to ask for her contact
20 information.

21 Q. And you expressed your startlement and surprise, right?

22 A. When?

23 Q. Through Facebook.

24 A. Yes, I did.

25 Q. And you were shocked that she left; right?

F230mar1

Moon - Cross

1 A. I think that's a fair characterization.

2 Q. Okay. And you were not -- when she left, it was unexpected
3 to you; right?

4 A. Yes, it was unexpected.

5 Q. You didn't say I'm not surprised she left because the work
6 environment was so hostile to her?

7 MR. CHASE: Objection.

8 THE COURT: Overruled.

9 Q. That's not your reaction to that?

10 A. My reaction was that I was very concerned what would be the
11 circumstances that would drive Ms. Marchuk to leave the firm.

12 Q. And so you reached out to Ms. Marchuk to hear, firsthand,
13 why she left, right?

14 A. That's correct.

15 Q. And you reached out with an acronym, WTF?

16 A. That's right.

17 Q. That's how you reached out. What is that an acronym for?

18 A. Well --

19 Q. We have heard it all in this trial.

20 THE WITNESS: It is profanity, your Honor, is that all
21 right.

22 THE COURT: Yeah, we have, unfortunately, had a fair
23 amount of experience with those kinds of things in this case.

24 So I'm concerned about the jurors' education, but
25 since they all look like mature people.

F230mar1

Moon - Cross

1 THE WITNESS: All right. For the benefit of the jury,
2 I think --

3 THE COURT: I can just picture them going around
4 afterwards and saying, You can't imagine what Judge Hellerstein
5 allowed to be said in his courtroom.

6 A. So don't say you learned it from me, but WTF stands for
7 what the fuck.

8 Q. That was your expression of surprise?

9 A. That's correct.

10 Q. And you asked for Ms. Marchuk's cell phone number?

11 A. Correct.

12 Q. This is December 23?

13 A. According to this exhibit.

14 Q. This is one day after she quit?

15 A. I don't recall that.

16 Q. All right. And you did speak to -- she did provide the
17 cell phone number, right?

18 A. That's correct.

19 Q. And you did speak to her on the cell phone?

20 A. I did, briefly.

21 Q. About why she quit?

22 A. More or less, yes.

23 MR. BURSOR: Your Honor, may I approach?

24 THE COURT: You may.

25 MR. BURSOR: I'm providing the witness with exhibit

F230mar1

Moon - Cross

1 YY?

2 THE COURT: For identification. Not in evidence.

3 BY MR. BURSOR:

4 Q. Mr. Moon, do you have exhibit YY?

5 A. I do.

6 Q. Have you seen it before?

7 A. I have.

8 Q. What is it?

9 A. It is a screenshot of a GChat conversation with my father.

10 Q. Defendants offer YY.

11 MR. CHASE: Objection, your Honor.

12 THE COURT: Sustained.

13 BY MR. BURSOR:

14 Q. Did you have a GMail chat with your father on
15 December 27th, 2011?

16 A. It appears I did.

17 Q. And did you discuss, with your father, Ms. Marchuk's sudden
18 and abrupt departure from the law firm?

19 A. Well, actually, it looks like I broached the subject, but
20 asked whether or not I should have a GChat conversation with
21 him.

22 THE COURT: Should have a what?

23 THE WITNESS: Whether or not I should talk about it on
24 GChat.

25 THE COURT: You were worried about it being

F230mar1

Moon - Cross

1 overheard?

2 THE WITNESS: Correct.

3 BY MR. BURSOR:

4 Q. You were worried that the Faruqis might be logging your
5 keystrokes and see what you said to your dad, right?

6 A. I thought it was a possibility.

7 Q. Okay. So what you did, was you said, dad, I'm going to
8 send you an e-mail about this; right, that's what you did?

9 A. I asked him for his opinion on whether or not I should be
10 concerned about a key stroke log. And my father said send me
11 an e-mail. Even though that would not change whether or not
12 there was a keystroke log, but, yes.

13 MR. BURSOR: Your Honor, may I approach?

14 THE COURT: You may.

15 MR. BURSOR: I'm providing the witness with a copy of
16 ZZ.

17 THE COURT: For identification.

18 BY MR. BURSOR:

19 Q. Mr. Moon, do you have exhibit ZZ?

20 A. I do.

21 Q. Have you seen it before?

22 A. I have.

23 Q. What is it?

24 A. E-mail sent to my father in response to his suggestion that
25 I do so.

F230mar1

Moon - Cross

1 MR. BURSOR: Defendants offer ZZ.

2 MR. CHASE: Objection.

3 THE COURT: Sustained.

4 BY MR. BURSOR:

5 Q. Did you tell your father what Ms. Marchuk told you on the
6 phone call, one day after she resigned?

7 A. No, I did not.

8 Q. Defendants offer ZZ.

9 MR. CHASE: Objection.

10 THE COURT: Sustained.

11 Did you have a conversation with Ms. Marchuk?

12 THE WITNESS: I did.

13 THE COURT: And did you make an effort to repeat
14 aspects of the conversation to your father?

15 THE WITNESS: No, I did not.

16 THE COURT: In this GMail, did you write to your
17 father about what you and Ms. Marchuk told each other on the
18 phone?

19 THE WITNESS: No, not directly.

20 THE COURT: What do you mean "directly."

21 THE WITNESS: I didn't mean to --

22 THE COURT: Do you see this third sentence here?

23 THE WITNESS: Yes, I do. I do.

24 THE COURT: And do you see the second, you "reached
25 out to her." Does this mean you physically threw out your

F230mar1

Moon - Cross

1 hand, trying to touch her? What does it mean, "you reached out
2 to her?"

3 THE WITNESS: Via Facebook. I sent her a message on
4 Facebook.

5 THE COURT: What does it mean you "reached out to
6 her". You called her up, you texted her?

7 THE WITNESS: Well, it says hear I reached out to her
8 via Facebook, which means I sent her a message on Facebook.

9 THE COURT: You communicated with her.

10 THE WITNESS: I sent a message on Facebook.

11 THE COURT: You communicated to her, you intended to
12 convey a message to her. I'm an old-fashioned person. What
13 does it mean to communicate?

14 THE WITNESS: Have a back-and-forth discussion.

15 THE COURT: Just say something?

16 THE WITNESS: Correct.

17 THE COURT: In words or writing.

18 THE WITNESS: Right.

19 THE COURT: And to listen to the response.

20 THE WITNESS: Uh-huh.

21 THE COURT: Yes?

22 THE WITNESS: That sounds accurate to me.

23 THE COURT: So did you have a communication with Ms.
24 Marchuk that you recorded in some fashion in this Gmail?

25 THE WITNESS: I did have a conversation.

F230mar1

Moon - Cross

1 THE COURT: Tell us about it.

2 THE WITNESS: Okay. So the conversation --

3 THE COURT: What you did you say to her, and what did
4 she say to you?

5 THE WITNESS: I don't recall what my initial statement
6 to her was. It was probably something along the lines of:
7 What happened.

8 And my recollection of what she said to me on that
9 phone call was that things got out of hand. And that part I
10 remember specifically. And then she either said something like
11 I have decided not to come back, or I have decided to leave.
12 Something along those lines.

13 MR. BURSOR: Defendants offer ZZ.

14 THE COURT: No, you can use it as cross-examination.
15 You know how to do a cross-examination, right, Mr. Bursor?

16 MR. BURSOR: I do. I also know how to put documents
17 in evidence, your Honor.

18 THE COURT: Do it.

19 BY MR. BURSOR:

20 Q. When you spoke to Ms. Marchuk on the phone --

21 THE COURT: The document is hearsay, but the
22 conversations in it are not.

23 MR. BURSOR: Prior inconsistent statement of the
24 witness.

25 THE COURT: My ruling stands.

F230mar1

Moon - Cross

1 MR. CHASE: Your Honor --

2 THE COURT: Sit down, Mr. Chase.

3 MR. CHASE: Badgering the witness.

4 THE COURT: The witness is not being badgered.

5 MR. CHASE: He is yelling at him.

6 MR. BURSOR: The mic doesn't work.

7 BY MR. BURSOR:

8 Q. When you spoke to Ms. Marchuk one day after she resigned,
9 she told you she had an affair with Juan?

10 A. That's not correct.

11 Q. When you wrote to your father, you told him --

12 THE COURT: Mr. Bursor.

13 MR. CHASE: We can all hear him, your Honor.

14 THE COURT: When you wrote to your father did you tell
15 your father that Ms. Marchuk told you that she had an affair
16 with Juan?

17 THE WITNESS: I wrote those words, but what I was
18 doing was adding my gloss to what Ms. Marchuk told me. What
19 Ms. Marchuk actually told me was, quote, "things got out of
20 hand," end quote. And something like: And I'm not coming
21 back.

22 Q. And when you wrote, "she told me she had an affair with
23 Juan," that was your gloss of what you understood Ms. Marchuk
24 said to you?

25 A. That was my speculation as to what she meant by things got

F230mar1

Moon - Cross

1 out of hand. And I never pressed Ms. Marchuk to elaborate what
2 she meant by, "things got out of hand."

3 MR. BURSOR: Defendant offer ZZ.

4 MR. CHASE: Objection. Still.

5 THE COURT: Accepted. It is admitted into evidence.
6 It is a prior inconsistent statement of a witness.

7 This information is not relevant, in and of itself,
8 except as to affect the credibility, if you consider it as
9 such, of the witness.

10 (Defendant's Exhibit ZZ received in evidence)

11 MR. BURSOR: May I display it?

12 THE COURT: You may not.

13 MR. BURSOR: I may what?

14 THE COURT: You may not.

15 MR. BURSOR: I may not display it.

16 THE COURT: It is a prior inconsistent statement.
17 That is all it is. It is not evidence in chief.

18 BY MR. BURSOR:

19 Q. Between the time you told your father that Ms. Marchuk told
20 you she had an affair with Juan, and the time you came here on
21 direct and said there was a disturbing episode, how many
22 meetings did you have with these fellows here?

23 THE COURT: Overruled.

24 THE WITNESS: Zero.

25 BY MR. BURSOR:

F230mar1

Moon - Cross

1 Q. Pardon?

2 A. Zero.

3 (Continued on next page)

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F23emar2

Moon - cross

1 BY MR. BURSOR:

2 Q. Zero meetings with Mr. Lipman?

3 A. The only conversations I've had with Mr. Lipman have been
4 about scheduling my deposition, which I was required to appear
5 for pursuant to a subpoena, as well as for testimony today.

6 Q. Now, Ms. Marchuk also told you about the kiss with Juan
7 after the hearing in Delaware, right?

8 A. She did, at the lunch, correct.

9 Q. And is that the one that today on the witness stand you
10 described as the disturbing episode?

11 A. That -- yes.

12 Q. Now, when you wrote an e-mail to your father on
13 December 23rd, you didn't describe it as a disturbing episode,
14 did you?

15 A. (Pause)

16 THE COURT: What's your recollection, Mr. Moon?

17 A. Well, in this e-mail I say, She told me previously that she
18 and Juan had kissed on her third day of work here after
19 drinking a lot.

20 Q. You wrote, I think it was mutual, right?

21 A. Right. I speculated that it was mutual.

22 Q. And then when you came here and testified on direct, you
23 testified to this jury you thought it was unwelcome?

24 A. Yes. That's my testimony.

25 Q. What happened between December 27, 2011, and today that

F23emar2

Moon - cross

1 made you change your story from a mutual kiss to an unwelcomed
2 kiss? What was it that made you make that change?

3 A. I think when I was writing this e-mail, I frankly was more
4 concerned about my own personal situation, which was how to
5 handle what I considered to be a very awkward situation at
6 work. And the point that I was trying to get advice from from
7 my father is whether or not I need to say anything or address
8 this somehow. And the circumstances of Ms. Marchuk leaving the
9 firm was actually secondary. And I was meaning to give a very
10 quick gloss on what had happened so I could get to the real
11 point, which is the second paragraph, which is me asking, How
12 should I handle this situation? This is very awkward. Am I
13 supposed to say anything?

14 So for purposes of getting that, you know, input from
15 my father, I sent this fairly tersely-worded e-mail. And so at
16 that time I put the gloss that I thought it was mutual and she
17 decided to leave.

18 Q. You understand what's happening at this trial, right?

19 MR. CHASE: Objection, your Honor.

20 Q. You've been following this trial?

21 THE COURT: Overruled.

22 A. I try not to pay attention to this trial.

23 Q. You understand that a big issue in this case is whether the
24 conduct was welcome or unwelcome. You understood that before
25 you came in here today, didn't you?

F23emar2

Moon - cross

1 A. I understand that that is an issue.

2 Q. And with that understanding, you changed your story from
3 mutual to, quote, unwelcome on your direct testimony with
4 Mr. Lipman; right?

5 A. I don't know that I was referring in this -- I actually
6 don't recall in this e-mail what I was referring to, if mutual
7 was the kiss that happened on the third day of work or whatever
8 it was that happened at the holiday party. So I'm not sure
9 that I'm saying something different.

10 THE COURT: Are you saying something at the holiday
11 party --

12 THE WITNESS: I don't think I was ever saying the kiss
13 was a welcome kiss in the e-mail, so I don't think I'm changing
14 my testimony.

15 THE COURT: So the mutuality of the affair you wrote
16 about at the holiday party could be what might have been
17 mutual?

18 THE WITNESS: That's -- I think that may be what I was
19 saying in the e-mail.

20 THE COURT: So you might be saying that the activity
21 that took place at the party was mutual but the kiss on the
22 third day of work was unwelcomed? Is that what you're telling
23 us?

24 THE WITNESS: I think that may be the case, because I
25 don't feel like I've ever said that in my lunch with

F23emar2

Moon - cross

1 Ms. Marchuk that she was trying to tell me that she was happy
2 that her boss had kissed her.

3 THE COURT: So her withdrawal from the firm followed
4 something that was mutual?

5 THE WITNESS: I was speculating there that perhaps
6 something had changed from the third day of work to whatever
7 had happened at the holiday party, and that that was mutual.

8 THE COURT: And then she withdrew?

9 THE WITNESS: Correct.

10 THE COURT: After a mutual affair?

11 THE WITNESS: Correct. That was my speculation.

12 BY MR. BURSOR:

13 Q. That was your conclusion based on the phone call you had
14 with Ms. Marchuk?

15 A. I wouldn't say it was based on the phone call. I think it
16 was just --

17 THE COURT: Mr. Bursor.

18 A. I don't know what it was based on.

19 THE COURT: I think whatever your points are, they're
20 finished.

21 Q. Now, you were the person -- there were three people on your
22 team, right?

23 A. I don't know the number of people on my team. There was a
24 handful of people who were in mergers and acquisitions
25 litigation.

F23emar2

Moon - cross

1 Q. You worked with Ms. Marchuk every day when she was at the
2 firm, right?

3 A. We were on the same team. I'm not sure that I would say
4 that we worked together. We worked on separate cases.

5 Q. You worked on the same floor with Ms. Marchuk and
6 Mr. Monteverde every day for three months?

7 A. That's right.

8 Q. And you worked on M and A cases and they worked on M and A
9 cases, right?

10 A. That's correct.

11 Q. And you never once in that office heard or saw
12 Mr. Monteverde make any sexual jokes or comments in the
13 presence of Ms. Marchuk; isn't that true?

14 A. I think that's right.

15 Q. And you never once heard or saw Mr. Monteverde acting
16 inappropriately around Ms. Marchuk in the office?

17 A. I find that hard to believe.

18 MR. BURSOR: Your Honor, may I approach.

19 THE COURT: You may.

20 MR. BURSOR: Just approaching to provide your Honor
21 with the deposition transcript. Your Honor, page 59, line 18
22 to 22. I'd like to read that to the jury.

23 THE COURT: You can't read it to the jury, but you can
24 ask the witness about it.

25 Q. Were you asked the following questions and did you give the

F23emar2

Moon - cross

1 following answer, quote: Did you ever observe him acting
2 inappropriately around her?

3 "A When you ask that way, I'm not sure if I have specific
4 recollections of what I would call inappropriate."

5 Were you asked that question and did you give that
6 answer at your deposition?

7 A. Well, assuming the transcript is accurate, I think that's
8 right.

9 THE COURT: What's your recollection?

10 THE WITNESS: I don't recall specifically being asked
11 that question or my answer.

12 THE COURT: Now that you read it, does it refresh your
13 recollection?

14 THE WITNESS: It sounds to me like what I'm saying
15 there is -- do I have a specific recollection --

16 THE COURT: It sounds to me that you can read, right,
17 Mr. Moon? You passed the bar?

18 THE WITNESS: I did.

19 THE COURT: You learned how to read?

20 THE WITNESS: I did.

21 THE COURT: Did you read this question and this
22 answer?

23 THE WITNESS: I understand the question and the
24 answer.

25 THE COURT: And were you asked that question and did

F23emar2

Moon - cross

1 you give that answer when you had your deposition taken on
2 October 21, 2013?

3 THE WITNESS: That sounds correct to me.

4 MR. BURSOR: Nothing further, your Honor.

5 THE COURT: Redirect.

6 MR. CHASE: Yes.

7 REDIRECT EXAMINATION

8 BY MR. CHASE:

9 Q. Quick questions. I believe you testified that you were
10 shocked when you learned that Ms. Marchuk left the firm. Why
11 were you shocked?

12 MR. BURSOR: Objection.

13 THE COURT: Overruled.

14 A. From what I recall, there was -- I had concerns that there
15 was a lot of turnover at the firm. So just generally hearing
16 another instance of an attorney leaving or possibly being fired
17 concerned me.

18 I also wasn't under the impression that Ms. Marchuk
19 had any intention of leaving the firm. So I was shocked that
20 she would.

21 Q. Had she ever discussed her loan situation with you?

22 A. I believe she did.

23 MR. BURSOR: Objection.

24 THE COURT: Sustained.

25 Q. When you were writing your dad an e-mail Mr. Bursor went

F23emar2

Moon - redirect

1 over with you, were you toning down at all the sexual content
2 because you're communicating with your dad?

3 THE COURT: Objection sustained.

4 MR. BURSOR: Objection.

5 A. I don't specific --

6 THE COURT: Don't answer when I sustain an objection.

7 Q. And finally, what's your recollection of the exact words
8 Ms. Marchuk said to you about the evening after the holiday
9 party when you called her?

10 A. What I specifically recall was that Ms. Marchuk said,
11 Things got out of hand.

12 MR. CHASE: I have no further questions.

13 THE COURT: Thank you, Mr. Moon. You're excused.

14 (Witness excused)

15 MR. LIPMAN: Your Honor, plaintiff calls herself,
16 Ms. Marchuk, to the stand.

17 THE COURT: Ms. Marchuk, I remind you that you remain
18 under your original oath.

19 You may inquire, Mr. Lipman.

20 MR. LIPMAN: Thank you, your Honor.

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F23emar2

Moon - redirect

1 ALEXANDRA MARCHUK,

2 called as a witness on her own behalf in rebuttal,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LIPMAN:

6 Q. Ms. Marchuk, after you started at Faruqi & Faruqi working
7 full time on September 6, 2011, did you ever ask anyone at the
8 firm whether you could go to Delaware to attend any hearings?

9 MR. BURSOR: Objection, your Honor. This is not in
10 the form that we discussed yesterday.

11 THE COURT: That's true, but I'm going to allow it.

12 A. No, never.

13 Q. Why not?

14 A. It didn't seem appropriate to ask to go. You're told what
15 to do in a law firm. You don't make demands on the employer.

16 Q. Mr. Monteverde testified that after the first trip to
17 Delaware for the hearing on September 8, 2011, when you and he
18 were at Lex Bar together, that there was no discussion of your
19 student loan debt. What do you recall?

20 A. I recall that when we were talking about my unemployed
21 classmates, that I had said that it wasn't an option for me;
22 that I had loans, that I had to start paying them off. I
23 remember him asking me more questions about it. He wanted to
24 know the exact amount. I didn't want to tell him, but he kept
25 pressing me. I didn't tell him the amount that night.

F23emar2

Marchuk - direct

1 Q. Did the subject of your student loan debt arise between you
2 and Mr. Monteverde after that night?

3 A. Yes, frequently.

4 Q. Did you bring it up or did he bring it up?

5 A. He brought it up.

6 Q. Concerning your interactions with Mr. Monteverde on
7 September 8th after the first trip to Delaware, did he kiss
8 you?

9 MR. BURSOR: Objection.

10 THE COURT: Overruled.

11 A. He did.

12 Q. Where?

13 MR. BURSOR: Objection.

14 THE COURT: Sustained. Outside the scope. This has
15 been covered substantially by Ms. Marchuk on her direct case,
16 and we're not going to repeat the direct case.

17 Q. Mr. Monteverde testified that you propositioned him for sex
18 on your third day of work outside of Lex Bar. Is that true?

19 A. No.

20 Q. Did you ever do such a thing?

21 A. No.

22 Q. There was testimony by Olive Alston that you and
23 Mr. Monteverde were like magnet and steel at the holiday party.
24 Is that true?

25 A. No.

F23emar2

Marchuk - direct

1 Q. Did you follow Mr. Monteverde around at the holiday party?

2 A. I did not.

3 Q. Did you attempt to ever sit next to Mr. Monteverde during
4 the holiday party?

5 A. No. I specifically tried not to. There were two seats
6 left at the last table. One was next to Mr. Monteverde and
7 Mr. Moon. I whispered that he should take it, and he did.

8 Q. Did you speak with Mr. Monteverde at the holiday party?

9 A. The first time I spoke with him was when we were leaving,
10 walking down the stairs.

11 Q. As you were leaving, walking down the stairs, what did you
12 say to Mr. Monteverde and what did he say to you?

13 A. My bonus was still on my mind. I finally just said
14 directly, am I getting a bonus? He said that we shouldn't talk
15 about it in front of everyone else. He had me stand with him
16 next to the stairs while everyone was going to the coat check.

17 Q. At that time did you ask Mr. Monteverde about why Dave
18 Leventhal had been fired from the firm?

19 A. No.

20 Q. At that time did you ask Mr. Monteverde about the finances
21 of the firm?

22 A. No.

23 Q. On the Friday, the day after the holiday party, when you
24 got to the office, did you contact Mr. Monteverde?

25 A. I did.

F23emar2

Marchuk - direct

1 Q. And what did you contact him for?

2 A. He had said the night before to not tell anyone what had
3 happened. He specifically said not to tell my cousin that I
4 lived with. When I got to the office, my -- there was a stain
5 on the floor, and it was obvious that -- what had happened.
6 And I didn't want anyone else to see it because he had said
7 that, you know, we couldn't tell anyone about it. And I didn't
8 know what else to do. He was the only person I could talk to
9 about it.

10 Q. In the office on the Friday after the holiday party, did
11 you speak with Nadeem Faruqi?

12 A. Not that I recall.

13 Q. Did you tell him, I had a great time at the party last
14 night?

15 A. I don't think so.

16 Q. In the office on the Friday after the holiday party, did
17 you have any discussions with Lubna Faruqi?

18 A. Not that I recall.

19 Q. Did you tell Lubna Faruqi that you had a great time at the
20 party last night?

21 A. I don't think so.

22 Q. During the day on Friday, the full day after the holiday
23 party, how do you remember feeling during that day?

24 MR. BURSOR: Objection.

25 THE COURT: Sustained.

F23emar2

Marchuk - direct

1 Q. Do you recall Mr. Faruqi testifying in this case,
2 Ms. Marchuk, that you seemed perfectly normal on the Friday?

3 A. I do.

4 Q. Remembering back to that Friday, how did you feel while you
5 were in the office that day?

6 MR. BURSOR: Objection.

7 THE COURT: Overruled.

8 A. I wasn't -- wasn't myself. I -- I felt overwhelmed, but I
9 also felt like I couldn't -- I couldn't talk to Brian, I
10 couldn't talk to the people that I normally saw. I stayed in
11 my office.

12 Q. Did Mr. Monteverde say anything to you about staying in
13 your office?

14 A. Yeah. He told me not to even look at Emily; to stay in my
15 office.

16 Q. Emily Komlossy?

17 A. Yes.

18 Q. Did you get work done on that Friday?

19 A. Not that I recall.

20 Q. Dr. Hammer testified that you went to work on the Friday,
21 and that was evidence that you were fine after what had
22 happened. Is that true?

23 A. No.

24 THE COURT: Well, what's not true, that he said it or
25 that she felt that way or what?

F23emar2

Marchuk - direct

1 MR. LIPMAN: Right.

2 Q. Is that true that you felt that way, you felt fine?

3 A. I didn't feel fine.

4 Q. Why did you go to work on that Friday?

5 A. It -- it's what I always did. It -- just when my alarm
6 went off, I got up and I went to work. I -- I don't know why I
7 did.

8 THE COURT: You set the alarm, right?

9 THE WITNESS: It's a weekly -- on weekdays it goes off
10 at a certain time.

11 Q. Dr. Hammer also testified that when he asked you during his
12 court ordered examination of you what you did on the weekend
13 immediately following the holiday party, you told him, quote,
14 nothing special, closed quote, or quote, nothing special
15 happened, closed quote.

16 What do you actually recall telling him?

17 A. I said that I didn't do anything. Those are my exact
18 words.

19 Q. Did Dr. Hammer follow up with you?

20 A. No.

21 Q. Did Dr. Hammer ask you any questions at all about what you
22 did on the weekend following the holiday party, other than to
23 just ask you if you did anything?

24 MR. BURSOR: Objection.

25 THE COURT: One minute.

F23emar2

Marchuk - direct

1 You covered this with Dr. Hammer, Mr. Lipman.

2 Objection sustained.

3 Q. What did you do that weekend, Ms. Marchuk?

4 MR. BURSOR: Objection.

5 THE COURT: Overruled.

6 A. I -- I don't have a clear recollection of doing much beyond
7 just staying in bed. It wasn't until we got my phone records
8 for this that I remembered I called Annie Prescott, my roommate
9 from law school; that I called two gynecologists' office; that
10 I had called my friend, Tori Leventhal; that I had called my
11 brother. The only person I actually spoke to was Annie
12 Prescott.

13 Q. Mr. Monteverde testified that over that weekend that you
14 were actively involved in working on the Pharmacet matter, I
15 think it was. Were you?

16 A. No. On Sunday he had sent me an e-mail. He had said that
17 a settlement had been reached. I sent -- I think first I sent
18 like a quick follow-up e-mail a few hours later that said,
19 Good. And then I sent a follow-up question. There had been a
20 problem with the banker books. He responded that it was fine.
21 He used an emoticon, which was really unusual. I don't think
22 he'd ever done that before. He -- his first e-mail he had
23 asked, he hoped -- if I was feeling any better.

24 Q. If you were to add up the minutes that you spent over that
25 weekend doing any kind of substantive work on cases for the

F23emar2

Marchuk - direct

1 Faruqi firm, what would that total be?

2 A. Under five minutes.

3 Q. Danielle Serpica testified that you followed Mr. Monteverde
4 around the office like a puppy dog. Did you?

5 A. No.

6 Q. Faruqi & Faruqi partner Adam Gonnelli testified that you
7 and he went to lunch together in March of 2012 in connection
8 with you asking him to be a reference for you on your resume.
9 Is that correct?

10 A. Yes.

11 Q. He testified that you asked him to keep your conversation
12 confidential. Is that true?

13 A. No. I had told him that I had counsel in connection with
14 my departure from the firm and that I couldn't say anything
15 more. But I didn't give him any confidential information, and
16 I didn't ask him to keep anything confidential.

17 Q. Did he ask you why you left the firm?

18 A. He did.

19 Q. And what did you say to him?

20 A. My exact words were, Because of Juan.

21 Q. Did he ask you to elaborate?

22 A. He did.

23 Q. What did you do?

24 A. I told him that I couldn't; that I had counsel of my own,
25 and that he couldn't get involved.

F23emar2

Marchuk - direct

1 Q. How did Mr. Gonnelli react?

2 A. He was upset. I remember that he balled his fist and he
3 hit the wall next to us.

4 Q. Mr. Monteverde testified that, looking back on the fall of
5 2011, he thinks you were obsessed with him. Were you?

6 A. No.

7 Q. Did you hire my law firm because we were in the same
8 building as Mr. Monteverde?

9 MR. BURSOR: Objection.

10 Q. Because you were obsessed with him?

11 THE COURT: I'm letting this question go.

12 Go ahead. You can answer.

13 A. No.

14 Q. What were the circumstances under which --

15 THE COURT: You hired Mr. Lipman because you thought
16 he was a good lawyer?

17 THE WITNESS: I hired him because the first lawyer I
18 spoke with specifically referred me to him.

19 THE COURT: Because you were referred to him, and you
20 thought he was a good lawyer?

21 THE WITNESS: Yeah.

22 THE COURT: That's the end of it.

23 Q. Did it have anything --

24 THE COURT: The end of the inquiry about the law firm.
25 You're in business to do these cases, right,

F23emar2

Marchuk - direct

1 Mr. Lipman? You've done these a long time. You're doing well.
2 That's all it goes to. That's how clients choose lawyers.

3 Next question.

4 MR. LIPMAN: I was going to respond to your question,
5 but I don't think need to.

6 THE COURT: Next question.

7 Q. Is there any reason why you didn't pursue --

8 THE COURT: Once upon a time clients hired me. Long
9 time ago.

10 MR. LIPMAN: They should be so lucky again, Judge.

11 THE COURT: Thank you, but I'm happy now.

12 BY MR. LIPMAN:

13 Q. Is there a reason that you didn't pursue further mental
14 healthcare or therapy --

15 THE COURT: We've gone over this.

16 Q. -- after your sessions with -- after your sessions with
17 Dr. Jacobson ended?

18 THE COURT: We've gone over that, Mr. Lipman.

19 MR. LIPMAN: It was part of the defendants' case to
20 question with Dr. Hammer why she didn't pursue further therapy.

21 THE COURT: Why didn't you pursue further therapy Once
22 you moved to the Midwest?

23 THE WITNESS: When I was going to see Dr. Jacobson, it
24 was really disruptive. I was starting a new job.

25 THE COURT: It was really?

F23emar2

Marchuk - direct

1 THE WITNESS: Disruptive.

2 THE COURT: Disruptive. Took time?

3 THE WITNESS: The way I felt the remaining day,
4 sometimes the day afterwards, it was okay for a document
5 review. I didn't think it was a good way to start at a new
6 job. And then I just didn't start back up.

7 MR. LIPMAN: No more questions.

8 THE COURT: Mr. Bursor?

9 MR. BURSOR: Your Honor, may I approach?

10 THE COURT: You may.

11 MR. BURSOR: Your Honor, I'm providing the witness
12 with a copy of Exhibit 33.

13 CROSS EXAMINATION

14 BY MR. BURSOR:

15 Q. Ms. Marchuk, do you have Exhibit 33?

16 A. Yes.

17 Q. Have you seen it before?

18 A. Yes.

19 Q. What is it?

20 A. It's the e-mail that I sent to Mr. Monteverde on Friday,
21 December 16th.

22 MR. BURSOR: Defendants offer 33.

23 THE COURT: Objection sustained.

24 MR. LIPMAN: Objection.

25 MR. BURSOR: Sustained?

F23emar2

Marchuk - cross

1 THE COURT: Right. It doesn't mean you cannot
2 inquire. You can inquire.

3 BY MR. BURSOR:

4 Q. Friday, December 16th, were you the second person in the
5 office?

6 A. No. My recollection is that Danielle Serpica, Steven --
7 last name starts with a B.

8 Q. Bentsianov?

9 A. Thank you. -- and Ms. Alston were already there when I got
10 into the office.

11 THE COURT: This is the morning after the party?

12 THE WITNESS: Yes.

13 Q. What's the first thing you did when you got in?

14 A. I think I put my things down in my office, and then I
15 walked to Mr. Monteverde's office.

16 Q. And that's when you saw the stain?

17 A. Yes.

18 Q. And then you closed Mr. Monteverde's door?

19 A. I did.

20 Q. Because you didn't want anyone else to see the stain?

21 A. Correct.

22 Q. And then you sent an e-mail to Mr. Monteverde?

23 A. Correct.

24 Q. And your e-mail had four words?

25 THE COURT: You wanted Mr. Monteverde to call you at

F23emar2

Marchuk - cross

1 work, right?

2 THE WITNESS: That's correct.

3 THE COURT: Let's go beyond this, please.

4 Q. You sent an e-mail to Mr. Monteverde -- you didn't ask him
5 to call you at work, did you?

6 A. I did not use a question mark.

7 Q. You didn't say please?

8 THE COURT: Please, Mr. Bursor. Just go ahead.

9 Q. You were comfortable expressing yourself to Mr. Monteverde
10 in the form of a command, weren't you?

11 A. I was not in my normal state on that Friday. I didn't have
12 Mr. Monteverde's personal number. I wanted to speak with him.
13 I don't think I put much more thought into it beyond that.

14 Q. So you didn't ask him to call you; you told him to call
15 you, correct?

16 A. I think I communicated it as quickly as possible. I didn't
17 know what to do.

18 THE COURT: Ms. Marchuk, it's a communication to
19 Mr. Monteverde by e-mail asking or telling him, Call me at
20 work. That's what it is, right?

21 THE WITNESS: Right.

22 Q. And the reason you sent that e-mail was because you wanted
23 to speak to him, correct?

24 A. Yes.

25 Q. And the reason you approached him as you were leaving

F23emar2

Marchuk - cross

1 Valbella was because you wanted to speak to him, correct?

2 A. I didn't approach him at Valbella. He was walking next to
3 me down the stairs. It seemed -- I had been drinking. It
4 seemed like a good time to bring up money. It was on my mind.

5 Q. You approached him; he didn't approach you?

6 A. I don't know how we ended up walking next to each other
7 down the stairs, but I do not recall approaching him.

8 Q. He hadn't spoken to you all night?

9 A. I don't recall speaking to him all night. I purposely
10 didn't sit near him at the table. When he left, I moved to
11 talk to Sarah.

12 Q. You sought him out to discuss your bonus, isn't that true?

13 A. That's not true. I had asked Mr. Moon about his bonus.
14 When I was walking out, I was next to Mr. Monteverde and I
15 asked him about it. I mean, I brought it up. I completely
16 admit that. But I didn't seek him out.

17 Q. Did you speak to Mr. Moon the day after you quit your job?

18 A. I did.

19 Q. Did you tell Mr. Moon you'd had an affair with
20 Mr. Monteverde?

21 A. I did not.

22 MR. BURSOR: Nothing further, your Honor.

23 MR. LIPMAN: One question, your Honor.

24 - - - - -

F23emar2

Marchuk - cross

1 REDIRECT EXAMINATION

2 BY MR. LIPMAN:

3 Q. Ms. Marchuk, as best you can recall, what did you say to
4 Mr. Moon and what did he say to you when you had a conversation
5 with him on December 23rd, 2011?

6 A. I -- I don't remember if it hadn't -- I don't know that I
7 recalled it until this litigation that I'd even spoken to
8 Mr. Moon. I don't know.

9 MR. LIPMAN: No more questions.

10 THE COURT: Thank you very much, Ms. Marchuk.

11 (Witness excused)

12 THE COURT: Plaintiff rests?

13 MR. LIPMAN: Sorry?

14 THE COURT: Plaintiff rests?

15 MR. LIPMAN: Plaintiff rests and requests a
16 five-minute bathroom break.

17 THE COURT: Defendant rests?

18 MR. BURSOR: Yes, sir.

19 THE COURT: I like to ask before the bathroom break,
20 lest in the bathroom they think of something else.

21 You'll take a ten-minute recess, and then we'll go on
22 from there. Close up your books. Keep an open mind. Do not
23 discuss the case.

24 People on that side, please move over to the left
25 side.

F23emar2

Marchuk - redirect

1 (Recess)

2 (In open court; jury not present)

3 THE COURT: How much are you going to speak in the
4 first go-around?

5 MR. LIPMAN: I'm hoping to take about 25 minutes.

6 THE COURT: Because we're going to time you. I'm
7 serious.

8 MR. LIPMAN: I assumed you would. I assumed you
9 would.

10 THE COURT: So you get 25, Mr. Bursor gets 30, and you
11 get 5.

12 MR. LIPMAN: If I run over my 25, I'll take my lumps.

13 THE COURT: We'll give you a warning, whenever you
14 want.

15 MR. LIPMAN: Sorry?

16 THE COURT: When do you want -- Bridget will warn you.

17 MR. LIPMAN: Maybe at 20.

18 THE COURT: Twenty, sure.

19 Bridget, do one at 20 and one at 23.

20 MR. LIPMAN: It won't start until I start speaking, I
21 hope.

22 MR. BURSAR: Your Honor, during my closing, I'd like
23 to put my timeline back from the opening statement. May I do
24 so?

25 THE COURT: You may. We'll have a very short break,

F23emar2

Marchuk - redirect

1 so you'll be able to set up.

2 MR. BURSOR: And, your Honor, I'm also going to use a
3 demonstrative that I showed to these gentlemen a couple days
4 ago on the screen.

5 THE COURT: On the screen?

6 MR. BURSOR: On the screen.

7 MR. CHASE: There's no stoppage time for fumbling with
8 a tripod, right?

9 THE COURT: I don't have a basketball referee fixing
10 the clock.

11 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: In this stage of the case are the lawyers'
3 summations. What the lawyers say is not evidence, but it's
4 entitled to be listened to very carefully. The lawyers have
5 lived the case, and now it's their time to put it all together
6 for you.

7 Each side will have 30 minutes to do that.
8 Mr. Lipman, arguing first for the plaintiff, has told me that
9 he wants to use 25 minutes for his main speech and then reserve
10 5 minutes for rebuttal. So Ms. Jones will give him a warning
11 at 20 minutes and 23 minutes to guide him. Then Mr. Bursor
12 will speak for 30 minutes. And then Mr. Lipman will conclude.
13 We'll have a very short break between summations.

14 So the lawyers are going to persuade you, each from
15 their perspective, and you should listen very carefully to
16 them. They may say that this witness said that and the other
17 witness said this and so on. And there may be objections, but
18 you should know that your recollections are what counts. You
19 do not have to accept -- and you should not necessarily
20 accept -- what the lawyers said about what happened at the
21 trial. You have your own recollections. But they've lived
22 this. They know this, and they try to be faithful to the
23 record; because in the end, you can look up what actually
24 happened and have it called back.

25 So listen carefully to what they say. They'll try to

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Marchuk - redirect

1 persuade you each from their turn. And then after that, after
2 lunch, I will give you the instructions, and then you'll begin
3 your deliberations.

4 Keep an open mind until after the instructions and you
5 begin your deliberations.

6 Mr. Lipman.

7 MR. LIPMAN: Thank you, your Honor.

8 THE COURT: It's 12:18. We'll give you as if it's
9 12:20, give you an extra three minutes' grace.

10 MR. LIPMAN: I may need them, Judge. Thank you.

11 There's a lot to say. It's been a long case, but I
12 appreciate all of you, the time and effort that you've put into
13 this case. Your attention has been amazing, from what I'm able
14 to tell. I haven't been looking at you the whole time, but
15 from what I can tell, you guys have paid a lot of attention.
16 And that's great.

17 This case is about Mr. Monteverde's abuse of his power
18 over and against Ms. Marchuk at the Faruqi & Faruqi firm.
19 Mr. Monteverde was the most powerful partner at the firm. He
20 made the most money in 2011 of anyone in the New York office.
21 And he used that power to his advantage against Ms. Marchuk in
22 many ways. And I'll be discussing them with you over the
23 course of this closing statement.

24 Mr. Bursor is going to tell you that Ms. Marchuk made
25 advances on Mr. Monteverde; that she had amorous inclinations

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Mr. Lipman - summation

1 towards him; that she invited him to do what he did to her;
2 that she went happily with him on the night of the holiday
3 party up to the offices. Not even close. She had no romantic
4 feelings towards Mr. Monteverde whatsoever. We will show you
5 why that is so with the documents that are in evidence, by
6 referring to some of her friends' testimony.

7 What she did on the night of the holiday party she did
8 because she was under enormous pressure. She felt threatened.
9 He threatened her. And Mr. Monteverde took full advantage of
10 that situation. It's all about his power and position in the
11 firm, the firm that she had just started at, the firm that she
12 had just started her whole career at.

13 Defendants' case is all about blaming the victim,
14 blaming Ms. Marchuk, blaming Ms. Marchuk for being in the
15 position she was in and reacting as best she could. They
16 should not get away with that, given the evidence, the
17 landslide of evidence here that you've seen and paid a lot of
18 attention to and to which you are going to apply your common
19 sense, your life experience. They say that she asked for it,
20 that she should have done something. They're trying to put her
21 on trial when Mr. Monteverde is really on trial, and the Faruqi
22 firm is on trial.

23 She asked to go to Delaware, they say. She got to the
24 firm her first day and she wanted to go to Delaware. That's
25 just not true. She was told she was going to Delaware. And

F23emar2

Mr. Lipman - summation

1 she was happy to go to Delaware, when she was told she was
2 going to Delaware, because it was a big motion; the glamor of
3 going to court in a room like this down in Delaware, great.
4 She went down.

5 And then on the way back, Mr. Monteverde had won his
6 first money for the firm. You heard that. He ordered wine.
7 You heard that. He suggested that she join him in drinking on
8 the train. Technical violation of the handbook there, no big
9 deal. The handbook really didn't matter to anyone at the
10 Faruqi firm.

11 They got back to New York and they went out to Lex
12 Bar. And you've heard a lot about that encounter at Lex Bar.
13 You heard Mr. Monteverde say that inside the bar they were
14 making out. Well, that just didn't happen. Inside the bar,
15 they had a discussion. Ms. Marchuk just testified -- you heard
16 her -- they discussed her loans. This was like a shark
17 circling a prey and bumping it. This is Mr. Monteverde, the
18 predator, bumping his prey, testing her out, wanting to know
19 her loans, wanting to know how she was feeling about being
20 fresh in New York City, right off the boat. And he kissed her
21 when they left Lex Bar.

22 They didn't make out in Lex Bar. Mr. Monteverde
23 wouldn't have done that. He testified that he did, but that
24 doesn't make any sense. Anyone from the firm could have walked
25 in the bar. He's a married man. They didn't make out in Lex

F23emar2

Mr. Lipman - summation

1 Bar. He stole a kiss from her on the street and asked her to
2 come up to the office.

3 His testimony is she asked him to come up to the
4 office on her third day of work. That just doesn't make any
5 sense. I couldn't imagine a brand new associate at a firm
6 being anywhere near that forward, much less that forward. It
7 just doesn't happen.

8 That night Ms. Marchuk barely slept. She was so
9 upset. She had gone from this great sort of trip down to
10 Delaware to see a court hearing to getting hit on by the main
11 partner who she was assigned to work for.

12 And you heard it from Mr. Moon today: Ms. Marchuk was
13 assigned to work for Mr. Monteverde exclusively. He was
14 working for Mr. Monteverde exclusively, too. It didn't happen
15 later, according to defendants.

16 The next day Ms. Marchuk went back to work, hopeful
17 that when Mr. Monteverde asked her out to lunch that day, that
18 he was going to apologize and things were going to get back on
19 track. Everything would be okay. It was just a momentary
20 lapse of reason on his part, perhaps. But when he took her out
21 to lunch that next day, he started talking about his father
22 having affairs. He started talking about the fact that he was
23 in a green card marriage. She saw pretty clearly, I think, at
24 that point that she was in a tough spot.

25 The next Monday he asked her out to dinner. And what

F23emar2

Mr. Lipman - summation

1 can she do but nod her head no. And here you have a document
2 that's in evidence, that defendants actually put into evidence.
3 And it's a GChat between Lexi Marchuk, plaintiff, and Melissa
4 Edwards on September 13, 2011. It's Plaintiff's Exhibit 19.

5 The judge is going to tell you you can bring these
6 exhibits with you into deliberations. I urge you to. This
7 exhibit is in evidence. You can look at it. It's pretty
8 amazing what it says. And it's a real conversation that
9 Ms. Marchuk is having with her friend --

10 MR. BURSOR: Objection.

11 MR. LIPMAN: -- Melissa Edwards.

12 It's in evidence.

13 MR. BURSOR: I don't think 19 is in.

14 MR. LIPMAN: I think this should be stopped time.

15 THE COURT: I won't charge you. (Pause) Referee's
16 time. We'll fix the clock. I gave an extra three minutes to
17 begin with.

18 Don't you have a list? Our records show 19 is not in.

19 MR. LIPMAN: It is in. It's in our admitted exhibits
20 book, 19. Definitely in.

21 THE COURT: Look at the transcript.

22 MR. HERSHBERG: We're looking at it right now.

23 THE COURT: There's a glossary at the end with
24 exhibits. (Pause)

25 MR. BURSOR: Page 122, your Honor.

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Mr. Lipman - summation

1 THE COURT: We don't have this as an admitted exhibit.
2 The objection is sustained.

3 MR. LIPMAN: Judge, we object. This was admitted.

4 THE COURT: Your recourse is to check the transcript,
5 show me where it's offered and received. But our records show
6 us that it was not an admitted exhibit. Therefore, the
7 objection is sustained.

8 MR. LIPMAN: We'll try to get back to it. May I
9 continue?

10 THE COURT: Of course.

11 MR. LIPMAN: The defendants say that Ms. Marchuk asked
12 to go down to Delaware again. I put it to you, she did not do
13 that. The second trip to Delaware was announced, and
14 Ms. Marchuk was extremely distraught by the prospects of going
15 down to Delaware again. You've got to remember the position
16 she was in at this point. It's her second week at work. Her
17 boss has just hit on her. He's the most influential partner in
18 the firm and he wants to bring her down to Delaware again.
19 There are no other jobs out there for her, and she's got almost
20 \$300,000 of debt. She's in a tight spot. And that's where
21 she's coming from.

22 Where's Mr. Monteverde coming from? He is the rising
23 star in the firm. He's feeling his oats. He's going down to
24 Delaware for an even bigger hearing than the first one, and he
25 is feeling super powerful.

F23emar2

Mr. Lipman - summation

1 Now, Mr. Rowley, whose picture I will show you just in
2 case you don't remember him, Mr. Rowley testified about
3 Mr. Monteverde and his power at the firm. He sat right there.
4 Mr. Rowley was, I put it to you, very credible. He's a 24-year
5 lawyer, 13 years partner with the Faruqis themselves. He saw
6 everything firsthand.

7 What did he tell you about Mr. Monteverde? He said
8 Mr. Monteverde is basically crude and rude. He runs roughshod
9 in the office. He's offensive to women. Mr. Rowley would feel
10 embarrassed and just walk back to his office when
11 Mr. Monteverde would say some of the things that he typically
12 said. Mr. Moon echoed that this morning.

13 Mr. Rowley also testified that when Mr. Monteverde
14 would make these kind of sexually charged comments in the
15 office place, that Mr. Faruqi would say, Handbook, in reference
16 to the employee handbook, and it became a joke. And Mr. Moon
17 echoed that this morning in his testimony.

18 Mr. Rowley testified that the environment at the
19 Faruqi firm was toxic on account of Mr. Monteverde.

20 Mr. Rowley also testified that Nadeem Faruqi, after
21 Mr. Monteverde made sexually charged comments, said, Someday,
22 Juan, you're going to cost this firm a lot of money.

23 So the second Delaware trip is coming, and Ms. Marchuk
24 is feeling enormous pressure. She talks to her friend Tori
25 Leventhal. You saw Tori Leventhal testify. Tori Leventhal is

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Mr. Lipman - summation

1 here. She sat right there. She testified that her very good
2 friend, Ms. Marchuk, was beside herself with worry about this
3 trip to Delaware and about generally her situation at the firm.
4 She wanted to try to help her friend, but she realized, and
5 Ms. Marchuk realized, that she didn't have any options, okay?
6 There was no other job out there. And complaining within
7 Faruqi & Faruqi was not going to work.

8 So Ms. Marchuk went out to dinner with Emily Komlossy
9 by coincidence. Emily Komlossy was in New York, and she saw
10 Ms. Marchuk in the firm. She invited her out to dinner. And
11 that gave rise to some very serious evidence in this case that
12 I don't think that you've gotten a lot of time with.

13 But what happened was they went out to dinner.
14 Ms. Marchuk sat down with Ms. Komlossy. Ms. Komlossy told
15 Ms. Marchuk that Juan Monteverde had reported to Ms. Marchuk
16 that Ms. Marchuk was -- I'm sorry, Mr. Monteverde had reported
17 to Ms. Komlossy that Ms. Marchuk had a crush on him, something
18 like that. And then Ms. Marchuk set Ms. Komlossy straight and
19 told her about what happened on the first trip to Delaware.

20 And Ms. Komlossy memorialized that meeting in a
21 document, which is Plaintiff's Exhibit 23. And I urge you to
22 take this one -- you can't take this because this is a
23 demonstrative, but take the actual exhibit with you into the
24 jury room. And I want to go over it with you a little bit
25 right now, because --

F23emar2

Mr. Lipman - summation

1 MR. BURSOR: Objection.

2 MR. LIPMAN: What's the basis of the objection? This
3 is definitely in evidence.

4 MR. BURSOR: 23 is not in.

5 THE COURT: Just a minute. Don't talk to each other.
6 Overruled.

7 MR. LIPMAN: Thank you. This is Plaintiff's 23 in
8 evidence.

9 THE COURT: Excuse me. 23 is not in evidence.

10 MR. LIPMAN: Yes, it is.

11 MR. BURSOR: Transcript page 121, your Honor.

12 MR. LIPMAN: It was initially not admitted but it
13 later was definitely admitted.

14 THE COURT: What page?

15 MR. BURSOR: Page 121 of the trial transcript.

16 THE COURT: What page was it admitted?

17 MR. BURSOR: That's where you sustain the objection.
18 I don't think it was admitted.

19 MR. LIPMAN: It was later admitted. No doubt. This
20 is outrageous.

21 THE COURT: Get your team working.

22 MR. BURSOR: Your Honor, withdrawn.

23 THE COURT: Okay.

24 MR. LIPMAN: Thank you.

25 THE COURT: Don't do that, Mr. Lipman.

F23emar2

Mr. Lipman - summation

1 MR. LIPMAN: It's a little exasperating, Judge. I'm
2 sorry.

3 THE COURT: Objection is overruled.

4 MR. LIPMAN: I think 19 is also in.

5 THE COURT: You may argue.

6 MR. LIPMAN: I apologize.

7 Plaintiff's Exhibit 23 is an e-mail. The principal
8 part of it is an e-mail from Emily Komlossy to Nadeem Faruqi on
9 September 19. The dinner at Rossini's was three days earlier,
10 on September 16, on Friday night. And she's reporting to
11 Mr. Faruqi on Friday, September 16, I invited Alexandra to join
12 me for dinner at Rossini's. We were generally chatting about
13 work and my experiences as a young lawyer. Alexandra proceeded
14 to disclose to me that she had gone out with Juan Monteverde
15 for drinks one night soon after she joined, at the conclusion
16 of which she claimed that he had kissed her and grabbed her
17 breast. Alexandra also indicated that since then Juan had
18 invited her to join him on his boat.

19 So this is what Ms. Komlossy is reporting to the head
20 of the firm that Ms. Marchuk told her. It's a very significant
21 document, because this shows what Ms. Marchuk actually told
22 Ms. Komlossy.

23 She goes on, She then proceeded to get teary and did
24 not want to be disclosed, saying that she wanted to continue
25 working with Juan but that she was apprehensive about going to

F23emar2

Mr. Lipman - summation

1 Delaware with him the following Tuesday because she knew he
2 would get drunk and was afraid of what might happen.

3 Now, what's interesting here is, yes, she does say she
4 wants to continue working with Juan. But the reason she said
5 that is obviously because the only alternative is to leave the
6 firm. He's got all the business. She can't simply work with
7 someone else. It's a small firm.

8 She was apprehensive about going to Delaware because
9 he was going to get drunk, and she was afraid what might
10 happen. As she continued to be teary and upset for the next
11 several hours. We stayed at the restaurant until after
12 midnight.

13 (Continued on next page)

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F230mar3

Summation - Mr. Lipman

1 We stayed at the restaurant until after midnight.

2 Now, Mr. Faruqi got this e-mail. He says, thanks, is
3 his reply. Early Monday night, he says thanks. We don't know
4 exactly when he got the e-mail, but by that evening, he said
5 thanks.

6 The next day Ms. Marchuk is scheduled to go to
7 Delaware with Juan Monteverde. Now, you heard about the street
8 corner conversation between Juan Monteverde and Nadeem Faruqi
9 the day after the Rossini's dinner, where Mr. Faruqi supposedly
10 read Mr. Monteverde the riot act and said, oh, it was totally
11 consensual. That was on the Saturday. Two days later,
12 Mr. Faruqi got this e-mail. You can't read this e-mail and not
13 conclude that what happened at Lex Bar was not consensual. And
14 Ms. Marchuk had her version of the story to tell. And
15 Mr. Faruqi never inquired of her. Now he says he was
16 respecting her privacy, because she didn't want it to be
17 disclosed. But she had disclosed it to Ms. Komlossy, a partner
18 in the firm.

19 Why didn't Mr. Faruqi overcome his trepidations about
20 offending Ms. Marchuk's privacy and get to the bottom of this?
21 I'll tell you why. Because Mr. Monteverde was keeping the firm
22 afloat. Mr. Faruqi didn't want to rock the boat. Mr. Faruqi
23 also could have sent Ms. Komlossy back to Ms. Marchuk to see
24 how things were going, to make sure that she was really
25 comfortable in this uneven, unequal relationship that had been

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Summation - Mr. Lipman

1 reported. But Ms. Komlossy also never followed up.

2 This e-mail, ladies and gentlemen, I would put to you,
3 is Ms. Marchuk's cry for help. In her second week at work: My
4 boss is hitting on me, I am uncomfortable with that.

5 And they just let it go. Nothing is done. Supposedly
6 Mr. Faruqi told Mr. Monteverde only don't socialize alone with
7 her. This is documentation. And it was documented by a lawyer
8 in the firm.

9 Now, when Mr. Monteverde heard that Ms. Komlossy had
10 made this report to Mr. Faruqi, he immediately called her up
11 called Komlossy up. You heard him admit in cross-examination,
12 he called her up. He was upset. He was upset that she had
13 told on him, basically. And Mr. Monteverde was really not so
14 much upset with Ms. Komlossy, but I think he was upset with Ms.
15 Marchuk for betraying him. And that would come up the night of
16 the holiday party at Lex Bar, right before they went up to the
17 office. He accused Ms. Marchuk of betraying him by telling
18 Ms. Komlossy about the Lex Bar incident.

19 Now, after the dinner at Rossini's on the 16th, and
20 the second trip to Delaware where Mr. Monteverde was on his
21 best behavior, but still made a blow job comment that Brad
22 DeLeeuw testified about. Brad DeLeeuw was the witness who my
23 colleague, John Hershberg, over here, read the testimony from,
24 was on his best behavior, but still couldn't help himself and
25 made a disgusting comment.

F230mar3

Summation - Mr. Lipman

1 From that point on, two months later, Mr. Monteverde
2 continued the harassment of Ms. Marchuk, unabated. And
3 he intermix mixed, within that sexual harrassment, praise and
4 criticism. So he is the boss. She's working for him
5 full-time. And he is threatening to fire her over typos, and
6 then he is praising her work. He is manipulating her. It is
7 textbook. Softening his prey, as well continuing his sexual
8 harrassment and banter.

9 He talked to her about perhaps sleeping in her
10 apartment. Renting space, renting space in her apartment and
11 sleeping with her some evenings. Skiing trips, boating trips.
12 And I will say, again, in this e-mail, Ms. Marchuk reported to
13 Ms. Komlossy that Juan had invited me to join him on his boat.

14 He talked about flight attendants, and how he would
15 want to go back to the 1950s when the morals were a little
16 looser. Talked about Russian hookers. Talked about strip
17 clubs. He was constant with it.

18 Now, Mr. Moon testified that Mr. Moon never
19 specifically saw Mr. Monteverde make any of these comments to,
20 or in the presence of, Ms. Marchuk. He was making them all
21 over the place anyway. But he was directing a lot of comments
22 at her secretly, because that was his MO. He didn't put
23 anything in writing. He was careful. He was the lawyer. He
24 was not going make evidence of this.

25 One evening, and Ms. Marchuk testified to this, and

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Summation - Mr. Lipman

1 this is what got her very nervous. She came to his office as
2 she was leaving and said do you need anything else. And he sat
3 back, and he gestured towards his mid section, and he said
4 nothing work related. And from that point on, she didn't go
5 into his office anymore. She conducted meetings with him at
6 his threshold. She was nervous about him.

7 Mr. Moon testified about Mr. Monteverde's interactions
8 with him, in which -- and also with respect to partner Gonnelli
9 where Mr. Moon thought that Mr. Monteverde was territorial.
10 With respect to Ms. Marchuk, he was jealous. Ms. Marchuk, at
11 one point, expressed that a lawyer on a case at another firm
12 had done good work. And Mr. Monteverde looked him up on the
13 internet and said, oh, look he is so ugly, you can't possibly
14 like him, you can't possibly have a crush on him.

15 She didn't say she had a crush on him, she said she
16 admired his work. Ms. Marchuk was not interested in
17 Mr. Monteverde.

18 Lexie Menish, Ms. Marchuk's friend from law school,
19 great woman. Fulbright scholar. Worked in World China
20 teaching English for three years. Absolutely credible. She
21 testified to you, from that stand, that she went out for drinks
22 with her good friend, and her good friend was in tears over her
23 situation with her loans, with her lease that her father had
24 guaranteed, with her boss hitting on her. There is no question
25 that Ms. Marchuk was not interested in Mr. Monteverde.

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Summation - Mr. Lipman

1 Tori Leventhal. Again, Tori Leventhal testified to
2 you. Tori Leventhal said that she was very seriously concerned
3 with the situation, and tried to troubleshoot it with Ms.
4 Marchuk, but couldn't.

5 And Ms. Marchuk also testified as to conversations she
6 had with her friend Sean Perryman, where he suggested maybe you
7 should make up a big boyfriend or something like that.

8 They were trying to deal with the terrible situation
9 that their friend was in.

10 Now, the defendants are gonna make an argument, I
11 assume, based upon the handbook, that Ms. Marchuk signed for
12 the employee handbook at Faruqi & Faruqi and, thereby subjected
13 herself to the letter of each of its provisions. And because
14 she did not report, using chapter and verse of the handbook,
15 that somehow she doesn't have a claim to the sexual harrassment
16 that she was experiencing. And I put it to you on several
17 different levels that that is just a specious, hollow argument.

18 First of all, the handbook at the Faruqi firm was a
19 joke. You have heard Mr. Rowley, and now Mr. Moon, testify
20 that Mr. Faruqi would say "handbook" in a joking way when
21 Mr. Monteverde would make his typical sexually-charged comments
22 around the office.

23 Ms. Goodwin testified, Kerrianne Goodwin, who came up
24 from Philadelphia and testified to you, that she had never even
25 received the handbook

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Summation - Mr. Lipman

1 THE COURT: Two minutes.

2 MR. LIPMAN: Thank you.

3 And Mr. Moon. Mr. Moon testified to that, as well.

4 And Ms. Marchuk also testified that when she mentioned the
5 handbook to Mr. Monteverde, that he offered to spank her with
6 it.

7 Exhibit 23 is effectively Ms. Marchuk's complaint in
8 the case, even though it wasn't under the handbook.

9 You've heard a lot about the holiday party. I'm
10 running out of time. And I apologize, I wish I had more time.
11 But Mr. Bursor initially promised you seven eyewitnesses. He
12 didn't deliver. Daniel Serpica, Olive Alston, Lubna Faruqi,
13 Nadeem Faruqi, all at the holiday party, said that Ms. Marchuk
14 and Mr. Monteverde were like magnet and steel, that she
15 shadowed him, that she was sitting next to him. Mr. Monteverde
16 and Ms. Marchuk agree on one thing. They didn't even speak to
17 each other during the holiday party. So that's four out of
18 seven, gone.

19 The other one, Sarah Westby, testified only that Ms.
20 Marchuk walked -- sat at Mr. Monteverde's plate and ate his
21 steak, which had not been touched before. She didn't testify
22 that they were following around.

23 The other two, David Bower and Vinny Munos.

24 David Bower, Mr. Monteverde's lifetime companion, was
25 bombed out of his mind that night. And testified

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Summation - Mr. Lipman

1 inconsistently on the stand, from his deposition testimony,
2 about the kiss at Lex Bar, and about sharing the cab from
3 Valbella to Ginger Man. He was out of it that night.

4 And Vinny Munos, Vinny Munos signed out --

5 THE COURT: Two minutes.

6 MR. LIPMAN: Vinny Munos signed out that night. This
7 is plaintiff's exhibit 103. End of shift. Vinny Munos.
8 Midnight. Gone.

9 So much for the eyewitnesses.

10 And you have heard a lot about what happened up in the
11 office the night of the holiday party, I'm not going to belabor
12 the point of what happened. I think Ms. Marchuk's testimony is
13 a lot more credible than Mr. Monteverde's twisted partner sex
14 fantasy about what went on that night.

15 There was blood on the floor the next day. Defendants
16 admit that. And that is indicative, from Dr. Park's testimony,
17 of what Ms. Marchuk said happened that night, not what
18 Mr. Monteverde testified happened that night.

19 Now I'm going to talk about damages. I don't have too
20 much time.

21 THE COURT: You don't have any time. Two minutes for
22 damages, and we'll stop.

23 MR. LIPMAN: Did you count the stop time?

24 THE COURT: Well, you have 30 minutes and 25 minutes
25 on this, and you're finished.

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Summation - Mr. Lipman

1 MR. LIPMAN: We broke for the exhibit for three
2 minutes.

3 THE COURT: I gave you the time. I gave you the time,
4 you started at 17 after. I counted it as 20 after.

5 MR. LIPMAN: Can I have three minutes for damages,
6 Judge?

7 THE COURT: It is now 14 minutes to 1:00. At 10
8 minutes to 1:00, I will stop you.

9 MR. LIPMAN: Okay.

10 There are four components to Ms. Marchuk's damages in
11 the case. There is back pay, and front pay, compensatory
12 damages for her emotional distress, and pain and suffering, and
13 punitive damages. And she deserves it all.

14 The back pay is the lost wages from January 2012
15 through today. In 2012, Ms. Marchuk made only \$19,000. She
16 should have made \$75,000. That's a difference you can
17 calculate. You can do the math.

18 In front pay, that's the money that she could earn
19 from today onward, were it not for the discrimination and her
20 having to leave the firm because of what had happened to her,
21 which is another element you need to find, that she felt she
22 couldn't stay there any longer. And I think you can easily
23 find that.

24 There is a different income, you know, that Ms.
25 Marchuk now is making \$85,000. If she had stayed at the Faruqi

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Summation - Mr. Lipman

1 firm for four years, she could earn between \$85,000 and
2 \$160,000 today. Defendants didn't even dispute that when
3 Michael Lord testified that that is the range that she could
4 expect to earn today. And we ask you to give her that
5 difference, between the high end of that range, which is what
6 Mr. Lord said she could earn, and the 85,000 that she is making
7 today. And you can project that out five or ten years in her
8 favor, depending on what you think her employability is going
9 forward, how much you think she would want to work given her
10 debt structure and her expectations.

11 Now, in terms of compensatory damages for pain and
12 suffering, Ms. Marchuk's life is forever disrupted by what
13 happened to her. Now, you may not know, you may not have a
14 loved one or yourselves, I hope none of you, have ever
15 experienced what she experienced. But you saw her when she was
16 testifying. She was shaking. And she is still affected by
17 this. And she will be affected by this for a long time to
18 come. It was a sexual encounter which was awful. We ask
19 you to award her for pain and suffering and return a verdict in
20 the range of \$2,000,000 for that.

21 I'm out of time.

22 THE COURT: Lawyers are not allowed to suggest any
23 number. The number that you pick is your number. And you
24 should disregard any suggestion. I will instruct you about
25 damages. Basically, they have to be proved, like everything

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Summation - Mr. Lipman

1 else in the case.

2 MR. LIPMAN: And you will also be asked to indicate on
3 the verdict form whether or not punitive damages are
4 appropriate here. And we implore you to say that they are.
5 Because punitive damages get awarded --

6 THE COURT: This is a matter of instruction and proof.
7 Appeals to implore are not appropriate. You are not to be
8 governed by emotion, you are governed by a rational and careful
9 review of all of the evidence.

10 I think you have used up your time.

11 MR. LIPMAN: We ask you to award punitive damages in
12 this case, pursuant to the judge's instructions.

13 Thank you.

14 THE COURT: Okay. Why don't we stretch in place.

15 Mr. Bursor will set up.

16 MR. BURSOR: Your Honor, may I have equal time,
17 because that went over a bit. Or did he use all of his 30.

18 THE COURT: Yes, you will have equal time.

19 Mr. Lipman, take 23 away.

20 Mr. Lipman nine minutes to. I'll count like it is
21 five minutes to. Gives you an extra four minutes.

22 MR. LIPMAN: Judge, I think you might have meant Mr.
23 Bursor.

24 THE COURT: Mr. Bursor. Sorry.

25 MR. BURSOR: Thank you, your Honor.

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Summation - Mr. Lipman

1 THE COURT: So you will end at 1:25.

2 MR. BURSOR: Ladies and gentlemen of the jury, I
3 appreciate the time you have spent on this case very much, but
4 I only have 34 minutes, so I can't thank you too many times
5 during the closing argument.

6 But this is the --

7 THE COURT: One good thanks is worth --

8 MR. BURSOR: Heartfelt thanks.

9 This is the timeline that I showed you during the
10 opening statement. I said that we were going to put on seven
11 witnesses about the events of the night of the holiday party.
12 And we did that. We put on Sarah Westby, who did testify that
13 the plaintiff ate Mr. Monteverde's food. We put on Olive
14 Alston, who testified that the plaintiff and Mr. Monteverde
15 were like magnet and steel during the holiday party. We did
16 put on Ms. Serpica, who testified that Ms. Marchuk shadowed
17 Mr. Monteverde around the party. We put on Mr. Bower, who
18 testified that he saw Mr. Monteverde and Ms. Marchuk walking
19 hand in hand from the Ginger Man Bar to Lex Bar, and then saw
20 them affectionate on the couch at the Lex Bar.

21 And, Mr. Bower, if you remember, was initially
22 confused. He was talking like it was 9:00 at night, and then
23 there was a suggestion maybe he was drunk out of his mind
24 because he was three hours off. But then on redirect, I asked
25 him, you flew in from LAX that day? And he said, Oh, yeah. So

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Summation - Bursor

1 he was three hours off because he was on West Coast time.

2 And then we have put on Vinny Munoz, who saw the
3 plaintiff and Ms. Marchuk as they walked in the building,
4 giggling, hugged up. And saw them as they walked out of the
5 building, 30 minutes later, giggling and hugged up. That's
6 five. The other two were Mr. and Ms. Faruqi, who also saw the
7 following at the party. So that's the seven witnesses. I did
8 what I said I was gonna do.

9 And the judge is gonna instruct you, after we finish
10 on the law, and how you're to evaluate the claims. And one
11 thing that you are going to hear is you are going to have to
12 determine, based on the totality of the evidence, whether the
13 interactions between Ms. Marchuk and Mr. Monteverde were
14 hostile and coerced on the one hand, or if they were welcome on
15 the other hand.

16 Because if they were welcomed, you can't have a
17 hostile work environment claim for conduct that is welcomed
18 that you seek out. And every one of these witnesses was
19 eyewitness testimony that Ms. Marchuk sought him out. She
20 sought him out at the party. She, herself, testified she
21 sought him out to discuss her compensation at the end of
22 Valbella. And, you know, we don't dispute that there was, you
23 know, some sexual conduct of some sort that did occur in the
24 office and that wasn't not right. But she sought that out.
25 You can't seek out a sexual encounter and then sue your law

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Summation - Bursor

1 firm because you sought out a sexual encounter with one of the
2 partners. That's the seven witnesses.

3 Now, the most important witness -- and I want to say,
4 this entire trial was really about what happened in this 30
5 minutes when they were in that office. Was that welcome or
6 unwelcome. And there has been a lot of sort of -- that's the
7 main meal, I would say. There has been a lot of parsley and
8 garnish about these inappropriate comments, that may or may not
9 have happened in Delaware, or as somebody is going to a mens'
10 room.

11 Ms. Marchuk didn't leave her job because somebody made
12 a joke about BJ's wholesale club. That's not why she left her
13 job. She left her job, their theory is, because she was upset
14 about the sexual encounter that happened in this 30 minutes
15 right here. And that's why I was very surprised, a few minutes
16 ago, that Mr. Lipman in his 25 or 30 minute closing argument,
17 didn't talk about that. He didn't talk about that.

18 He talked about Komlossy, and Rossini's restaurant.
19 He spent almost half an hour talking about everything but what
20 happened in that office where the blood got on the carpet. So
21 I do want the talk about that, because I thought that was what
22 the case -- that was the reason that she left the firm.

23 Now, we know that they went to the office at 3:00 a.m.
24 Right there that's a pretty strong fact. Because their story
25 is he was sexually harassing her, he was vile, he was coercing

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Summation - Bursor

1 her. But the facts are she followed him from bar to bar. And
2 she was closing down Lex Bar at 3:00 a.m. Is that consistent
3 with a relationship of hostility? Or is it consistent with
4 welcoming behavior and encouraging behavior.

5 Who goes to a bar for hours and closes the bar down
6 with someone that is hostile to them. Who says I was sexually
7 harassed by this guy, when I followed him from bar to bar at
8 3:00 a.m. because he was harassing her. Then why did she
9 follow him from bar to bar. It is a strange story. And then
10 when Mr. Marchuk explained what they did when they -- after
11 they closed down Lex Bar. We know they walked to the office.

12 And I asked Ms. Marchuk, did you walk with him
13 willingly to the office. And she said yes.

14 He didn't drag her to the office, she went willingly.
15 And, again, the judge is gonna tell you you need to weigh the
16 evidence and say was this hostile or was it welcome. If you
17 are walking willingly to the office at 3:00 a.m., you don't do
18 that if you are in a relationship with hostility. You do that
19 if you are in a welcoming and encouraging relationship.

20 And I asked her: You knew you were not going to the
21 office for a work purpose, right?

22 Answer: Right.

23 She went to that office for sex. He did, too. But so
24 did she. There was no pretense about what was going to happen
25 at that office. They walked from a bar, to the office, for

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Summation - Bursor

1 sex. They shouldn't have. Neither one of them should have.
2 But that's what they did. And they both did it. They both did
3 it.

4 Now, Mr. Lipman wants to portray her as some innocent
5 being bumped by a shark. They try to give the impression that
6 she was some babe in the woods. But she was not a babe in the
7 woods. She was the wolf. She sought him out. And she took
8 him back to that office. For sex.

9 And then the judge asked Ms. Marchuk, the judge said:
10 You could have just gotten in a cab, couldn't you?

11 Yeah, or I could have walked to Grand Central. That's
12 where I was headed. I could have.

13 She had choices. He did not drag her there
14 involuntarily. He did not coerce her there. She sought it
15 out. She had choices.

16 Now, she says she was being threatened. She was
17 crying. Vince Munos says different. Vince Munos, the security
18 guard, sees them coming in, because he has to unlock the door.

19 Now, their theory I guess is that Vince Munoz is not
20 there. Their theory is that Mr. Monteverde and Ms. Marchuk
21 walked to an office building, one block from Grand Central
22 Station, at 3:00 in the morning, unguarded, unlocked, just
23 walked in. That's their case.

24 I say Vince Munoz was there. Vince Munos says Vince
25 Munos was there. Vince Munos says they were both there. And

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Summation - Bursor

1 Vince Munos says they were hugged up and they were giggling.
2 Nobody was crying.

3 Oh, and by the way there, were no flowers. She didn't
4 carry 10 pounds of flowers to three different bars. We'll talk
5 about the flowers in a minute.

6 So he sees them on the way in, and he sees them on the
7 way out. And this is on the way out, they were still hugged up
8 giggling.

9 What happened in between? What happened in between
10 hugged up and giggling going up, and hugged up giggling going
11 down.

12 Ms. Marchuk's version is that Mr. Monteverde put the
13 numbers on the key pad to open the door to the office. First
14 her version is we walked in, nobody saw us. Munoz is not
15 there. Walked into the unguarded building at 3:00 a.m.
16 Mr. Monteverde does the keypad on the office, opens the door
17 for her. She walks in ahead of him leading the way to the
18 office. She has a 10-pound centerpiece of flowers in a bag,
19 according to her. That's the second version.

20 The first version, she walks to the office, flowers
21 are not mentioned yet. She pauses in the doorway. She is
22 going willingly to the office in front of Mr. Monteverde. He
23 shoves her from behind, so hard she thinks she's in a fight and
24 her right shoe falls off.

25 Now, she has walked willingly from Lex Bar to the

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Summation - Bursor

1 office at 3:00 a.m. for sex. And, suddenly, from behind, the
2 man shoves her? Shoves her? So that's the first shove.

3 Then she says he comes into the office, behind her,
4 and he undresses her. So now she is naked, he is fully
5 clothed, he shoves her again. He shoved the naked woman, so --
6 knocked her to the ground. This is her story.

7 Then he leaves her on the ground, goes, disrobes
8 completely. Then comes back, gets on top of her. And you have
9 heard the two different versions. That's her version. Until I
10 asked her on cross, that first shove, what happened. I was
11 trying to get her to say that I braced myself so that I
12 wouldn't fall. Because if a 6-foot man shoves a 5'2" woman,
13 hard, she's probably going to fall, or she's going to have to
14 catch herself. So I thought she was going to say I caught
15 myself, or braced myself. And I was going to say where were
16 the flowers. But it didn't happen that way.

17 Instead, she said she did this, she curled her fingers
18 around the arms of her coat when she was shoved and somehow
19 caught her balance. And that's when I did where were the
20 flowers, because there were no flowers. And then we got a
21 story about the flowers being set down in a hallway outside,
22 but nobody else saw those flowers.

23 She made up the flowers, because it was weird. She
24 made up the flowers during her session with Dr. Hammer.
25 Because she let down her guard, and Dr. Hammer asked her -- she

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Summation - Bursor

1 went into his office the morning after. She went -- she said
2 she was -- she didn't use this word, I used the word. She
3 essentially said she was raped, all right. I think I'm the
4 only person said that word at this trial, and I'm sorry for
5 that, but that's essentially what she is saying.

6 So, now, six hours after the rape, she goes back into
7 his office. He is not even there. He is not even there. She
8 goes into his unoccupied office. And Dr. Hammer said why did
9 you do that. And she couldn't think of a reason. And so she
10 came up with the flowers. I thought I left the flowers in
11 there the night before, so I went to get the flowers.

12 Now, let's say there were flowers. Suppose there were
13 flowers, she's telling the truth about the flowers. Six hours
14 after being raped, she's thinking about flowers? I got to get
15 those flowers from Mr. Monteverde's office? That seems -- does
16 that seem like what would be going through the mind of a rape
17 victim six hours later, I want to go back to the scene of the
18 crime --

19 MR. LIPMAN: Objection, mischaracterizes --

20 THE COURT: Overruled.

21 MR. BURSOR: So what happens? She goes in his office,
22 she sees that they have left an embarrassing stain on the
23 carpet. And who does she contact, who does she seek out? She
24 seeks him out again, 9:36 a.m., the alleged rapist. Call me at
25 work. This babe in the woods, who is so fearful of

f230mar3

Summation - Bursor

1 Mr. Monteverde, who has been raped by Mr. Monteverde six hours
2 ago, seeks him out again. And she doesn't ask, she tells him,
3 call me at work. She was not a babe in the woods. She was the
4 wolf. She commanded him to call, and he called. She's still
5 seeking him out.

6 Now, the story falls apart even more the next Monday
7 when we get to the gynecologist, because she did have the
8 injuries, she had the small tear to the hymenal ring. And
9 Dr. Park came in and explained it. And she didn't tell the
10 gynecologist, I was shoved twice, I was raped. What did she
11 tell the gynecologist? This is from exhibit 38, the
12 gynecologist notes, Dr. Park, "After unprotected intercourse.
13 December 15. After getting drunk at office holiday party.
14 Patient reports it was consensual with boss. She remembered
15 that he stopped when she told him. And he did not come inside.
16 Patient states she is emotionally, psychologically okay. "

17 Now -- she has PTSD now. She is like a Vietnam vet
18 coming back from the war. But when she was talking to Dr. Park
19 on December 19th, she was emotionally, psychologically Okay.
20 Now she wants \$2,000,000 for PTSD.

21 So, I ask Dr. Park -- there was all this shoving going
22 on. Dr. Park saw no bleeding by the time Ms. Marchuk got
23 there. No active bleeding. No bleeding of any kind. It was a
24 small tear in the hymenal ring. It was well healed by the
25 Monday. And, in fact, it was healed by six hours later,

f230mar3

Summation - Bursor

1 because -- and this is one of the most embarrassing things I
2 ever had to do in the courtroom -- but I asked Ms. Marchuk,
3 were you wearing a sanitary pad when you went back to the
4 office Friday morning, six hours later. And she said she was
5 not.

6 So the pleading was not a big deal. But the judge is
7 gonna tell you you can consider the bleeding. We don't dispute
8 there was blood on the carpet. The significance of that, that
9 is for you to decide. But there was no sanitary pad on Friday,
10 no active bleeding at the gynecologist's office. Dr. Park, no
11 injury of any kind on the external genitalia.

12 Dr. Park only thinks she saw a slight laceration on
13 the hymenal ring. I asked Dr. Park, did Ms. Marchuk tell you
14 this story about the two shoves, like she told this jury.
15 Nothing about any acts of violence like being shoved or hit.

16 And of course Dr. Park testified Ms. Marchuk told her
17 it was consensual. And so, now, gynecologist is a big problem
18 for their case. Because she sought him out. She went to the
19 office for sex. That is what she told her gynecologist. So
20 now they've got a problem with the gynecologist, so they put
21 Ms. Marchuk on the stand to try to fix it.

22 How does she fix it? She says that she lied to her
23 gynecologist. That's what she says now. Is she lying to her
24 gynecologist, or is she lying to you? You are going to have to
25 judge her credibility.

f230mar3

Summation - Bursor

1 Now, during her entire tenure at the firm, she never
2 once made any complaint about Mr. Monteverde. And, in fact,
3 she went to great lengths to ensure that the relationship that
4 she was having with Mr. Monteverde would not be revealed to
5 Nadeem Faruqi or to Lubna Faruqi. That was Ms. Komlossy's
6 testimony. And the plaintiff did not dispute that.

7 She told Ms. Komlossy, at Rossini's restaurant, they
8 had this kiss. Ms. Komlossy's testimony, Ms. Komlossy
9 testified the plaintiff told her Mr. Monteverde was a bad
10 kisser. Now it's a stolen kiss. But it was enough kissing for
11 her to form a judgment about whether he was a good kisser or a
12 bad kisser. That's consistent with welcome and encouraged
13 activity, not hostile and unwelcomed or coerced activity.

14 She never made any complaint. Instead, she went --
15 she went and had lunch with Tori Leventhal. And that's when
16 things went very badly. Because Tori Leventhal has a very,
17 very deep hatred for Mr. Monteverde and for the Faruqis. And
18 you know why.

19 And Tori Leventhal is her best friend. So if she's
20 involved in a consensual relationship with Mr. Monteverde,
21 that's not gonna be very helpful to her friendship with her
22 best friend. It's gonna be a problem.

23 So, now, Tori Leventhal gets involved. Then we get
24 some lawyers involved. Tori Leventhal gets her to the
25 gynecologist, you've got to go see a lawyer. Tori Leventhal

f230mar3

Summation - Bursor

1 didn't say, oh, my God, you were raped, let's go tell the
2 police. She didn't say that. You know why? Because the
3 police don't give out \$2,000,000 for PTSD. That's why they
4 didn't tell the police. The other reason they didn't tell the
5 police was because it didn't happen. There was no rape here.

6 So who did she tell, and what did she say?

7 December 22nd, e-mail to Lexie Menish. I really
8 wanted to not make a big deal about it and keep working with
9 him.

10 Not that she wanted to keep working at the firm, but
11 she wanted to keep working with him. She wanted to not make a
12 big deal about it. Does someone who gets raped say I don't
13 want to make a big deal about it? You know what she didn't
14 want to make a big deal about, was that the sex was so bad,
15 because he was so drunk and it was so awkward. She didn't want
16 to make a big deal about it, she wanted to keep working with
17 him. She is still seeking him out on December 22. But she had
18 a good friend who wouldn't let that happen. That's why she
19 quit her job. We know who that good friend is. She quit her
20 job because of what her friend thought, not what she thought.

21 Gmail chat, same day, to Melissa Edwards: I would
22 have kept working there, to be honest --

23 This is when she was being honest. This is when she
24 was being honest. She would have kept working there.

25 -- but everyone else has such a strong reaction.

f230mar3

Summation - Bursor

1 One of the things the judge is gonna tell you is that
2 in order for you to find the work environment hostile, you have
3 to find that an objectively reasonable person would have found
4 it so intolerable that they had no choice but to leave, and
5 that the plaintiff, herself, subjectively perceived the
6 environment to be so intolerable that she had no choice but to
7 leave.

8 MR. LIPMAN: Objection, misstates the law.

9 THE COURT: Overruled.

10 MR. BURSOR: And exhibit 44 -- and, by the way, this
11 one is in evidence --

12 THE COURT: Whether it misstates or accurately states,
13 you'll determine for yourself when you hear the charge. The
14 lawyers are free to anticipate the charges and argue what they
15 think I'll say. But you will hear it yourself.

16 MR. BURSOR: Now this is exhibit 44. It is in
17 evidence, you can get it, you can take it in the jury room if
18 you want to see it. This is what she said when she was being
19 honest. And the judge is gonna tell you what the law is. And
20 please listen carefully, because this is very, very important.
21 She did not subjectively perceive the office to be so
22 intolerable that she had to get out of there. It was everyone
23 else. It was Tori Leventhal giving her bad advice.

24 And then I asked her, were you quitting because of the
25 reactions of other people and not your own. The reason I asked

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Summation - Bursor

1 her that is because I knew, at the end the case, the judge was
2 gonna tell you what the law was, and I was gonna make this
3 argument. And she said Tori and I have been friends for a long
4 time. We typically have similar reactions to thing. And hers
5 was so different than mine.

6 Hers was different because Ms. Marchuk's reaction was
7 everything is okay. To be honest. I wanted to keep working.
8 Not at the firm, I want to keep working with him. She had an
9 attachment to him. But, then, she also had a disappointment
10 about how her career was going, how much money she was making.
11 She was not happy with her bonus, we heard a ton about that.
12 And in her dealings with Tori Leventhal, she figures out, oh,
13 my God, I can get paid off to go away. She never expected
14 there to be a trial. Hopefully, it wouldn't come to that. She
15 didn't expect she was going to have to raise her hand on the
16 witness stand, swear to tell the truth, and tell the lies that
17 she told from that stand. She thought the Faruqis would just
18 break out the checkbook and pay her off to go away so she could
19 go kayaking in Hawaii with her friends.

20 This lawsuit was a strategy to boost up her bonus.
21 This is what she was telling her friends immediately before
22 quitting. Now, she still hasn't said a word to Nadeem Faruqi
23 and she hasn't said a word to Lubna Faruqi, and hasn't said a
24 word to Olive Alston. This is a sucker punch. She never gave
25 them a chance. She never gave them a chance to do anything

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Summation - Bursor

1 about it.

2 This is what she did. Exhibit 45. She sends an
3 e-mail later in the day: Yesterday was my last day at the
4 firm. I will not be returning. You will hear from my lawyer.
5 Don't contact me.

6 She never gave them a chance to do anything about it
7 if she had a problem. And, in fact, when Emily Komlossy
8 offered to do something about it, if you have a problem with
9 Juan, we'll put you somewhere else. No, no, I want to keep
10 working with Juan. She sought him out, and sought him out, and
11 wanted to stay with him until this. Until this sucker punch.

12 And the reason it is a sucker punch is because she
13 agreed she wouldn't do this. When she came to the firm, and
14 this is exhibit N, also in evidence. You got a problem, tell
15 Lubna Faruqi, Olive Alston, and Nadeem Faruqi. She never gave
16 this policy a chance. She never gave these three people a
17 chance.

18 She didn't even speak to them face to face and say why
19 she left. She didn't even tell them why she left. In her
20 e-mail. She didn't even mention Mr. Monteverde in her e-mail.
21 She didn't even send that resignation e-mail to Mr. Monteverde.
22 This case has nothing to do with Mr. Monteverde. This case is
23 about these two people, the Faruqis. She wants their money.

24 The judge is gonna -- the judge already told you, the
25 judge already told you, page 5 of the transcript, on the first

f230mar3

Summation - Bursor

1 day of this trial before I even gave my opening statement. She
2 cannot just quit her job and sue for lost wages. She must
3 prove by a preponderance of the evidence that her working
4 conditions were so intolerable that a reasonable person would
5 have felt compelled to resign. That's what the judge said
6 before this trial even started. And what did she say, the same
7 day she quit: I would have kept working there, to be honest,
8 but everyone else has such a strong reaction.

9 And she was honest with Brian Moon on December 23rd,
10 the following day. And Brian Moon came away from that
11 conversation, she had affair with Juan, it was mutual.

12 This story about the fake rape and this fake PTSD was
13 invented for this lawsuit to get money from the Faruqis. There
14 is no evidence to support it.

15 Now, the judge is gonna give you a verdict form when
16 you go back to the room. There is gonna be a verdict form that
17 says, several times, it's little bit repetitive: Has the
18 plaintiff proved her case against Mr. Monteverde; has the
19 plaintiff moved her case against the law firm.

20 And there is a yes and a no.

21 And I want you to take this verdict form and check no
22 on every one of these questions. She has not -- she had the
23 burden to prove it, and she hasn't proven it. We didn't have
24 the burden to prove anything. She has got to prove her case
25 and she did not do it. And, in fact, we disproved her case.

f230mar3

Summation - Bursor

1 Because everything we say is backed up by a document, it is
2 backed up by sworn testimony.

3 And they have got people making up stories. Like
4 Brian Moon. How credible did Brian Moon look to you? How
5 credible did he look? The judge is asking him if he speaks
6 English. Did he seem honest when he saying, yeah, it seemed
7 unwelcome. How credible was that?

8 Now, I want you to answer no to every one of these
9 questions about whether she proved her case. In the unlikely
10 event that you do not do that, and you answer yes to one of
11 those questions, then you're gonna have to answer a series of
12 questions about damages.

13 Now, damages are not automatic. Damages have to be
14 proven. So even if you say, well, maybe there was some
15 discrimination here, you can't award damages just because you
16 find discrimination. You have to find damages were proven.
17 And there is three types of damages being sought. One is back
18 pay. That's pay for how much her salary is reduced from the
19 time she quit till the day you render that verdict. The
20 problem is, you don't have any evidence about that. You didn't
21 have an expert come up here and calculate it for you. You
22 didn't have a schedule, here's how much she made, here's how
23 much less she made, with the math. There was no evidence of
24 any lost back pay. They had the burden to prove that, they did
25 not do it.

f230mar3

Summation - Bursor

1 THE COURT: Five minutes.

2 MR. BURSOR: What did they do? They didn't put a
3 damage expert on. They put on this fellow, Lord. And they
4 tried to pass him off as an expert on damages. And the judge
5 said, no, he is an expert on recruiting.

6 So, for back pay, they needed to prove what she would
7 have made if she stayed at Faruqi & Faruqi from the day she
8 quit until today, how much would she have made. And then you
9 can award that -- then you subtract whatever she did make, and
10 you can award that as back pay.

11 The problem they have is Lord didn't evaluate what she
12 was going to make at Faruqi & Faruqi. The Court asked him how
13 did you figure that out, he said he didn't. No evidence of
14 back pay. No evidence for front pay, either. Front pay is
15 from today, going forward. No evidence what that would be.
16 Lord made no effort to discuss her actual job searches. Didn't
17 get any data on that. Didn't consider it. No data on any
18 lawyer that ever lateraled out of Faruqi & Faruqi. And, by the
19 way, he had access to these data, but he didn't want to sign a
20 confidentiality agreement to say he wouldn't put it up on his
21 website and do something improper. So he said, you know what,
22 don't show me that data. I'm just going to make up this 80 to
23 165 range. They didn't even say, they put on their whole case,
24 took two weeks, they never once said how much money they want
25 until Mr. Lipman, in closing argument, said give us two million

f230mar3

Summation - Bursor

1 for PTSD. Because he knows he didn't put on any proof of real
2 economic damages.

3 Lord didn't study her actual compensation after she
4 left. He had to say what would she have made and then how much
5 less did she make after she left and subtract it. He didn't do
6 it.

7 Sorry for the yelling, I get excited.

8 So then we have PTSD. So, now, no economic damages at
9 all, no back pay, no front pay, no real economic damages.
10 Nothing. No evidence of it.

11 So what do they come up with? Post traumatic stress
12 disorder, like a Vietnam vet. And how did they prove that?
13 They brought that guy with the English accent, Dr. Lawrence
14 Jacobson. Sometimes. Nom-de-plume, when he is recommending
15 the services of his wife on Park Slope List Serve for Young
16 Mothers who has had a baby. He poses as a woman. Not only as
17 a woman, he poses as the mother of young children to recommend
18 the counseling services of his wife --

19 THE COURT: Two minutes.

20 MR. BURSOR: -- to mothers of other young children in
21 Park Slope, Brooklyn. Mr. Lipman knows that, because Mr.
22 Lipman is his very good friend. Because Mr. Lipman's law firm
23 represented him in a dispute with his ex-wife. Because Mr.
24 Lipman's law firm represented him in a real estate deal. That
25 is the impartial psychologist they brought. Heather Baker.

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Summation - Bursor

1 And if you would bring a scammer like that, if you would bring
2 a scammer and a liar, like Heather Baker, a/k/a Jacobson into
3 this courtroom, if you would fake PTSD for a lawsuit to get
4 money -- she's never been treated for any disorder other than
5 by that quack, Jacobson, posing as Baker. No treatment before,
6 no treatment after, only treatment at the behest of her lawyer.
7 She is faking PTSD. It is the fakest case of PTSD you will
8 ever see in your life. What kind of person does that?

9 THE COURT: One minute.

10 MR. BURSOR: What kind of a person fakes PTSD for a
11 lawsuit to get money? A person who wants to profit from her
12 own wrongdoing.

13 She was complicit every step of the way. She went to
14 the that office for sex, just like Monteverde went to that
15 office for sex. But Monteverde has been punished. And you
16 heard his punishment. And his punishment was severe. She
17 wants to be rewarded.

18 She did wrong, too. This PTSD is fake. And when you
19 think about her credibility, you have to weigh it not only
20 against the seven witnesses, you have to weigh it against the
21 fake PTSD she claims to suffer. And by the way, Jacobson even
22 admitted, he doesn't know if she has PTSD now. He can't
23 testify whether she has any condition now. And Dr. Hammer told
24 you she didn't, she had no impairment.

25 There is no basis for any award of emotional,

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Summation - Bursor

1 distress, damages, PTSD, nothing. The Faruqis have been
2 punished enough. Monteverde has been punished enough. Do not
3 punish them more. Do not reward her for her own wrongdoing.
4 She was not a babe in the woods. She was the wolf.

5 THE COURT: Five minutes, Mr. Lipman.

6 MR. LIPMAN: Thank you, your Honor.

7 THE COURT: Now, Mr. Bursor is very emotional. I'm
8 sure this case means a lot to him. It means a lot to me, too.

9 The one thing he really avoided discussing was the
10 obvious, the sexual harrassment that had gone on for Ms.
11 Marchuk's entire time at the Faruqi firm. He didn't discuss
12 that, at all. He didn't discuss his client Juan Monteverde's
13 pervasive and continuous hostile actions in the office,
14 generally, which we completely proved, and towards Ms. Marchuk,
15 herself.

16 Ms. Marchuk was definitely harassed here. And all
17 that activity is what led up to the night of the holiday party.
18 And that's all about credibility. That's the one thing I agree
19 with Mr. Bursor about is you've got to judge the credibility of
20 the witnesses here. And Ms. Marchuk, I put it to you, was
21 extremely credible on the stand. And the only lie she told in
22 this whole case was to her gynecologist, because she thought --
23 and she testified to this -- she thought her gynecologist was
24 going to force her to report to the police. And she still
25 wanted to keep her job. She was so traumatized by what had

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Rebuttal - Lipman

1 happened, by the whole series of events, her debt, everything
2 else. She just wanted to keep her job, so she told a white lie
3 to her gynecologist. And that's what they want to blow up as
4 to impede her entire credibility here.

5 On the other hand, look at Mr. Monteverde. Who did he
6 lie to in this case? When Mr. Faruqi called Mr. Monteverde at
7 the airport when Mr. Monteverde was about to fly to Spain, he
8 said what happened. Mr. Monteverde told him about what
9 happened up in the office, but he didn't mention the blood on
10 the carpet the next day, the tense disagreement he had with Ms.
11 Marchuk the next day as to whether or not they had sex. He
12 didn't mention Ms. Marchuk having to go to the gynecologist.
13 He lied to his partners. And he continued to lie to them for
14 the next 10 months, until they got my firm's demand letter.

15 Mr. Bursor said, Ms. Marchuk never gave the firm a
16 chance. She sure did. She sure did. She sent them a demand
17 letter. We didn't have to be here, she sent them a demand
18 letter --

19 MR. BURSOR: Objection.

20 THE COURT: Overruled.

21 MR. LIPMAN: She sent them a demand letter and they
22 ignored it, which set into motion these events.

23 Even after they got the demand letter, Mr. Monteverde
24 didn't come clean to them. He didn't mention about the
25 disagreement about sex. He had to admit the bloodstain because

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Rebuttal - Lipman

1 it was in the letter. And he said, yeah, there was a
2 bloodstain. They didn't do anything about it. They had the
3 carpet ripped up.

4 Tori Leventhal seems to be a very pivotal person for
5 them in this case. Ms. Marchuk's good friend, Tori
6 Leventhal --

7 THE COURT: Two minutes.

8 MR. LIPMAN: -- had no hatred for anybody. She
9 testified on the stand, her husband who got fired from the
10 firm, was happy to get fired, because he already had other
11 plans that he had made the previous August.

12 Now, in terms of damages, Mr. Bursor is dead wrong.
13 We have a solid claim for back pay. Because when Ms. Marchuk
14 left, when she was forced to leave the firm, she didn't make
15 hardly any money for the next year, okay. She made \$19,000,
16 she would have made 75. That's clearly back pay.

17 In terms of front pay, Michael Lord did testify as to
18 the expected range that Ms. Marchuk would make at this point in
19 time, forward. And that was from 85,000 to 160,000. And he
20 testified that she could make within the top range of that. So
21 those are her damages, what she could be expected earn had this
22 never happened to her. And now she's making 85. So the
23 difference between 85 and what she could earn, projected out
24 five or ten years, is what we say are her front damages, and we
25 ask you to give her.

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Rebuttal - Lipman

1 THE COURT: One minute.

2 MR. LIPMAN: And what I found particularly offensive
3 about Mr. Bursor, is the words he had to say about Dr.
4 Jacobson. Dr. Jacobson has been practicing therapy in this
5 city, helping people for the better part of 25 years. And
6 to hear him be disparaged as a quack, he treated Ms. Marchuk
7 without even knowing that there was gonna be a trial or
8 anything, because we were concerned about her. He saw her, and
9 helped her, tried to help her. And they she moved to Nebraska.

10 THE COURT: Thirty seconds.

11 MR. LIPMAN: His testimony was from his own perception
12 of her. He thought that she had PTSD. Of course he couldn't
13 testify as to what she has now, because he has not treated her
14 recently. But you observed her testifying about what happened.

15 And we rely on your common sense and your good
16 judgment as to who is telling the truth here. We think it is
17 obvious.

18 Thank you.

19 THE COURT: Okay. Thank you, members of the jury for
20 your patience.

21 Thank you, lawyers, for your summations. It's now
22 1:30. 2:15, back for lunch. We'll have lunch. We'll give you
23 the instructions at 2:15. They will take about an hour and a
24 half, maybe a little less. That will get us to about 3:30.

25 My plan would be, then, to have you start your

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Rebuttal - Lipman

1 deliberations, elect a foreman, and then you continue as long
2 as you need to. I know one of the jurors has something to go
3 to late this afternoon. I'm not sure you can make it, but
4 we'll give it a try. And you can count on coming back in
5 tomorrow at 10:00 and continuing your deliberations.

6 What I need to tell you, now, we'll collect the
7 notebooks now. Do not discuss the case. It is not over. Keep
8 an open mind, listen to my instructions, and then you can start
9 to deliberate. You will have all of the discussions you need.

10 All right, stand for the jury.

11 (Jury excused)

12 THE COURT: Okay, recess for lunch. Back at 2:15.

13 (Luncheon recess)

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AFTERNOON SESSION

2:25 p.m.

(In open court; jury not present)

THE COURT: Someone wants to talk to me?

MR. BURSOR: Yes, sir.

Your Honor, two issues with the verdict form. One is just that the numbering of the questions, it goes one, two, three, five. There's no question four. So five should be four and six should be five.

But the more significant issue, your Honor, is that the way the verdict form is set up, it suggests that the jury has to consider and respond to questions on damages when that's not necessarily the case. If the answers to questions one through three are no, then they don't need to proceed past the first page. They should not consider questions four and five; five and six, as they're currently numbered. And we would suggest that a statement on the verdict form after question three that says, if you have not answered in the affirmative to any of these three questions, you should not -- sign the verdict form and send it in. You're done.

THE COURT: I'll instruct them that way.

(Continued on next page)

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(In open court; jury present)

THE COURT: Be seated, everyone.

I hope that's not a comment on the case.

JUROR: No, sir.

THE COURT: So, members of the jury, this is the last stage, the Court's instructions as to the law.

You've attended this trial very patiently, very attentively and I think very interestedly. It's been a long trial. A lot of evidence has come in. Were it not for your patience, were it not for your involvement, we could not have reached this stage. So I'd like to thank you. I'd like to thank you for your service. I'd like to thank you for the quality of your service.

And I'd like to remark, once again, on the remarkable notion of the founders of this country in providing for a trial by jury and the Sixth Amendment to the United States Constitution. We are the only country in the world trying civil cases by juries. I think the quality of justice that we get by being a partnership of the citizenry, the Court and the lawyers is unique. It's an example of democracy. It's an example in applying equal protection of laws to everyone. It makes what we do part of what you do, and it strengthens the country as it strengthens the quality of justice. I thank you for all of this, for attending to your duties as citizens of the United States to help the lawyers and the parties resolve

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Jury charge

1 their cases.

2 My job is to tell you what the law is. It's not that
3 I'm smarter than you or smarter than the lawyers. It's my job.
4 Your job is to receive and absorb what I say and apply it, to
5 understand and resolve the facts of the case. I have no
6 opinion about the facts. Notwithstanding my rulings on
7 objections, my asking of questions, my comments to the lawyers,
8 I have no opinion on the outcome of this case. That's your
9 job. My job is to give you the instructions on the law. Your
10 job is to accept them and apply them to the facts of the case.

11 You took an oath to deliver impartial and fair
12 judgment, without prejudice or sympathy, without fear, solely
13 based upon the evidence in the case and the applicable law.
14 I'm confident that this is what you will do.

15 You decide the case on the basis of the evidence. The
16 evidence before you consists of answers given by witnesses,
17 responsive to the questions put to them, and the exhibits that
18 were received in evidence. You must base your verdict solely
19 upon the evidence developed at trial or the lack thereof.

20 What I have said is not evidence. What the lawyers
21 have said in their objections and arguments is not evidence.
22 Evidence comes only from the witnesses who answer the questions
23 put to them and the exhibits.

24 Ms. Marchuk has alleged that she was injured as a
25 result of the actions of Mr. Monteverde and the Faruqi & Faruqi

F23emar4

Jury charge

1 law firm. As the plaintiff, Ms. Marchuk must prove the facts
2 that support her allegations by a preponderance of the
3 evidence. When a party is required to prove a fact by a
4 preponderance of the evidence, it means that that party must
5 prove that the fact is more likely true than not true. A
6 preponderance of the evidence means the greater weight of the
7 evidence. In determining if a claim has been proved by a
8 preponderance of the evidence, you may consider the relevant
9 testimony of all witnesses, regardless who called them, and of
10 all exhibits received in evidence, regardless of who offered
11 them.

12 If you find that the credible evidence on a given
13 issue is evenly divided between the parties -- that is, it is
14 equally probable that plaintiff is right as it is that
15 defendant is right -- then you must decide that issue against
16 the plaintiff. If the evidence relevant to an issue is equal,
17 plaintiff has failed to satisfy her burden of proof by a
18 preponderance of the evidence. However, plaintiff need prove
19 no more than a preponderance. If you find that the scales tip,
20 however slightly, in favor of plaintiff -- that is, what
21 plaintiff claims is more likely true than not true -- she will
22 have proved that issue by a preponderance of the evidence.

23 We're not involved with the burden of proof in a
24 criminal trial, which is beyond a reasonable doubt. The
25 standard is preponderance of the evidence.

F23emar4

Jury charge

1 Alexandra Marchuk, the plaintiff, alleges -- an
2 allegation is not proof -- alleges that she was employed as an
3 attorney at the Faruqi & Faruqi law firm in New York City
4 between September 6, 2011, and December 22, 2011, a space of a
5 little more than three months. She alleges that she worked
6 under the supervision of Juan Monteverde, a partner of the firm
7 and a defendant in the lawsuit. Ms. Marchuk alleges that she
8 resigned because she was sexually harassed and could not
9 reasonably continue working in that firm and under his
10 supervision. Ms. Marchuk alleges that both the Faruqi & Faruqi
11 law firm and Juan Monteverde are liable for economic and
12 emotional damages and for punitive damages.

13 Defendants deny that Ms. Marchuk was harassed.
14 Defendants claim that she welcomed Mr. Monteverde's sexual
15 advances, and defendants allege that the sexual encounters were
16 not part of the firm's work environment and cannot be the basis
17 of an employment-based lawsuit against the firm. Those very
18 basically are the claims and the defenses, and as I said at the
19 outset, set up the trial. What counts is not the allegations,
20 not the claims, but the proofs; because it is your obligation
21 to decide this case not because of the allegations or what you
22 sense about the allegations, but what is actually proved at the
23 trial.

24 When I last summarized the case before you at the
25 outset, there were a number of additional claims and a number

F23emar4

Jury charge

1 of additional parties. The case has been winnowed, so some of
2 these claims and some of these parties have dropped out. You
3 are to pay no mind to claims that have dropped out or to
4 parties that have dropped out. I will instruct you on the
5 claims that are in suit and the parties that are in suit. Pay
6 no mind to other claims. Pay no mind to other parties. Pay
7 attention only to the claims and parties described in these
8 instructions.

9 Now as a generality, federal law, New York State law
10 and New York City law each provides for remedies for employees
11 who face discrimination in the workplace. Each law has its own
12 set of characteristics. And I will ask you to deliver a
13 judgment, a verdict, on each of these claims; on the federal
14 claim, on the New York State claim and on the New York City
15 claim. I will give you instructions on each. And the verdict
16 form that you will get, and I will explain to you later, has
17 provisions that allow you to deliver your verdict in an easy
18 yes/no format, after hearing these instructions and using them
19 to deliberate on the evidence of the case.

20 I'll start with federal law, if only because I'm a
21 federal judge and this is a federal court. You should know
22 that there is jurisdiction in this court to hear both federal
23 claims -- that is, a claim arising under the laws or
24 constitution of the United States -- and in certain situations
25 state claims. For example, if one citizen of one state sues a

F23emar4

Jury charge

1 citizen of another state, that case can come into the federal
2 court and the federal judge has to become knowledgable and
3 instruct on state law. Similarly, if there's a relation
4 between a federal law and state law or city law, the same thing
5 is true. That's all background context unnecessary. I just
6 tell you this so you understand how the federal court will
7 involve itself, both in federal law and in state law. But I
8 will begin my instruction on federal law.

9 Federal law provides that it shall be an unlawful
10 employment practice for an employer to fail or refuse to hire
11 or to discharge any individual or otherwise to discriminate
12 against any individual with respect to compensation or terms or
13 conditions or privileges of employment because of such
14 individual's race, color, religion, sex or national origin.
15 Federal law applies to employers based on conduct of
16 individuals working for them and not to the individual
17 themselves. And that's why the plaintiff's claim under federal
18 law is against not Juan Monteverde, who is the individual
19 involved, but the employer, Faruqi & Faruqi. Federal law
20 provides that the employer is the one that is potentially
21 liable, not the individual who works for the employer.

22 Ms. Marchuk complains that she was sexually harassed
23 by Juan Monteverde. She alleges that Mr. Monteverde was her
24 supervisor at Faruqi & Faruqi. Sexual harassment means verbal
25 or physical abuse of a sexual nature sufficiently severe or

F23emar4

Jury charge

1 pervasive as to change the terms and conditions of employment
2 and thereby create a hostile work environment. Specifically,
3 Ms. Marchuk claims that Mr. Monteverde expressed himself in
4 coarse and suggestive language intending to convince
5 Ms. Marchuk to submit to his sexual demands, and that
6 eventually Mr. Monteverde forced sex upon her. She claims that
7 this created a hostile and abusive environment, changing the
8 terms and conditions of her employment.

9 Mr. Monteverde denies that his speech was harassing,
10 hostile or abusive and claims that his sexual relationship with
11 Ms. Marchuk was voluntary, mutual and welcomed. And he
12 contends that his conduct had no relation to Ms. Marchuk's work
13 environment.

14 So these are the issues. It's a clash of claims and
15 denials. I will give you the instructions that may help you
16 resolve this clash.

17 First, you should determine if Mr. Monteverde was, in
18 fact, Ms. Marchuk's supervisor. A supervisor is somebody with
19 significant control over an employee's working conditions,
20 including the ability to hire or fire or promote or otherwise
21 affect the employee's pay and work responsibilities. A person
22 can be a supervisor if his evaluations can affect plaintiff's
23 hiring and firing and promotions, pay and advances of pay and
24 work responsibilities.

25 If you find that Ms. Marchuk has proved by a

F23emar4

Jury charge

1 preponderance of the evidence that Juan Monteverde was her
2 supervisor, then Ms. Marchuk can demonstrate a hostile work
3 environment within Faruqi & Faruqi, but she has to pass and
4 satisfy three more criteria, each by a preponderance of the
5 evidence: Did Mr. Monteverde subject Ms. Marchuk to unwelcomed
6 sexual advances in a work setting in the form of kissing,
7 touching, sexually explicit language or intercourse? In
8 determining if the advances were unwelcomed, you should
9 consider if Ms. Marchuk welcomed or encouraged the advances or
10 whether they were unwelcomed, thrust upon her or coerced.

11 Second, if the alleged conduct of Mr. Monteverde was
12 unwelcomed, was it so severe or pervasive that a reasonable
13 person in Ms. Marchuk's position would find the work
14 environment to be, and that Ms. Marchuk subjectively perceived
15 her work environment to be, hostile or abusive? Would a
16 reasonable person in Ms. Marchuk's position find the work
17 environment to be hostile or abusive, and did she subjectively
18 think it was that way? Trivial harms alone, such as coarse
19 language, jokes and teasing, generally do not suffice. Both a
20 reasonable person in Ms. Marchuk's position and Ms. Marchuk
21 have to feel that the hostile environment was severe and
22 pervasive.

23 Third, was the alleged harassment, hostility or abuse
24 directed at Ms. Marchuk because she is a woman? If your answer
25 to any of the three questions is no, Faruqi & Faruqi win. If

F23emar4

Jury charge

1 your answer to all three questions is yes, then Ms. Marchuk has
2 made her discrimination claim, subject to one more
3 qualification. And that is a defense of Faruqi & Faruqi that
4 it had procedures that could have alleviated sexual molestation
5 within the firm, and that Ms. Marchuk unreasonably failed to
6 take advantage of the opportunities that the firm's procedure
7 allegedly gave her.

8 This is a defense, and so it is the burden of Faruqi &
9 Faruqi, not the plaintiff, to prove the defense by a
10 preponderance of the evidence. If you find that Faruqi &
11 Faruqi proved by a preponderance of the evidence that it had
12 procedures that reasonably could have prevented the
13 discriminatory behavior, and Ms. Marchuk unreasonably failed to
14 take advantage of the opportunities at the firm to fix her
15 situation, then you should find in favor of Faruqi & Faruqi on
16 this federal claim.

17 That ends this instruction on the federal claim.
18 Anybody need a repetition of anything here? Supervisor, three
19 criteria, the defense.

20 The verdict sheet on this issue says as follows:
21 Under federal law, has plaintiff Alexandra Marchuk proved her
22 case by a preponderance of the evidence against defendant
23 Faruqi & Faruqi, LLP? Applying these instructions to the
24 evidence, if you find that she has, you check yes. If you find
25 that she has not, you check no.

F23emar4

Jury charge

1 The next instruction as to the state claim, under
2 New York State human rights law. Unlike the federal law,
3 New York State law can apply to individual defendants. And as
4 the case has been shaped, the defendant involved in the
5 New York State law claim by Ms. Marchuk is the individual
6 defendant, Juan Monteverde.

7 The New York State human rights law provides -- and
8 the words are pretty similar to the federal law -- it shall be
9 an unlawful, discriminatory practice for an employer or
10 licensing agency, because of an individual's age, race, creed,
11 color, national origin, sexual orientation, military status,
12 sex, disability, predisposing genetic characteristics, marital
13 status or domestic violence victim status to refuse to hire or
14 employ or to bar or to discharge from employment such
15 individual or to discriminate against such individual in
16 compensation or in terms, conditions or privileges of
17 employment.

18 Under New York State law a supervisor may qualify as
19 an employer. The test under New York State law is essentially
20 the same as that under federal law. First, plaintiff has to
21 prove by a preponderance of the evidence that Juan Monteverde
22 acted as her supervisor, applying the same tests as I
23 instructed you to apply under federal law. I won't repeat
24 them. I think you have them.

25 Ms. Marchuk then has to prove each by a preponderance

F23emar4

Jury charge

1 of the evidence the same three criteria as I instruct you to
2 consider under federal law. And again, I won't repeat them
3 unless you want me to.

4 Yes.

5 JUROR: Are we going to get a copy of that?

6 THE COURT: No. I don't -- there are reasons for
7 that.

8 JUROR: That's fine.

9 THE COURT: Some judges do give out copies. I've
10 found out in 38 years of law practice, and 16 as a judge, that
11 people listen to the instructions. The juries follow them.
12 And for that reason, and many others, I don't give out my
13 charge. If you have questions later on -- sometimes you don't
14 have questions immediately -- you can ask me to repeat or
15 enlarge on any of these charges. I don't want any of you to be
16 the judge inside the jury room as to what the judge said. If
17 you have a question, you'll come back. And if you want me to
18 repeat at any time, just let me know. I feel that I can watch
19 your faces and understand if you're attentive in absorbing this
20 better when I deliver it orally than when you have it in
21 writing and you read along with me.

22 So I'm not going to repeat the three criteria, because
23 they're the same under the state law as in the federal law. So
24 if you find that Ms. Marchuk proved by a preponderance of the
25 evidence that Mr. Monteverde's words and conduct were

F23emar4

Jury charge

1 unwelcomed by her, were sufficiently severe and pervasive as to
2 create a sexually hostile and abusive working environment and
3 were motivated by the fact that Ms. Marchuk is a woman, then
4 you should find in favor of Ms. Marchuk on the state law claim
5 against Mr. Monteverde.

6 If you find that she failed to prove any of the three
7 elements by a preponderance of the evidence, or that
8 Mr. Monteverde was her supervisor, then you should find in
9 favor of Mr. Monteverde on the New York State law claim. And
10 again, the verdict form in question two provides a yes/no
11 response. After you apply my instructions to the facts and
12 make your decision unanimously, you check the appropriate box.

13 Under New York State law, has plaintiff, Alexandra
14 Marchuk, proved her case by a preponderance of the evidence
15 against defendant Juan Monteverde? Yes or no. You check the
16 appropriate box.

17 The next set of claims has to do with New York City
18 law, since New York City has its own law against
19 discrimination. And under the charter for the New York City,
20 there is a law enabling provision. New York City law provides
21 that it shall be an unlawful discriminatory practice for an
22 employer or an employee or agent thereof, because of the actual
23 or perceived age, race, creed, color, national origin, gender,
24 disability, marital status, partnership status, sexual
25 orientation or alienage or citizen status of any person to

F23emar4

Jury charge

1 refuse to hire or employ or to bar or to discharge from
2 employment such person or to discriminate against such person
3 in compensation or in terms, conditions or privileges of
4 employment.

5 Under New York City law Ms. Marchuk needs to show by a
6 preponderance of the evidence that Mr. Monteverde created a
7 hostile or abusive work environment for Ms. Marchuk by treating
8 her less well than other employees, even if the hostile work
9 environment was not severe or pervasive, and did so at least in
10 part because of her gender.

11 So the key to this difference is that the federal and
12 state standard of a severe or pervasive hostile work
13 environment is not required. The criteria in the New York City
14 law is treating a woman less well. Whether that makes any
15 difference in its application, I leave to you. But that's the
16 different criteria.

17 Under New York City law Ms. Marchuk needs to show by a
18 preponderance of the evidence -- I'm instructed to stop
19 coughing.

20 How many of you are old enough to remember the Jackie
21 Gleason show? I guess none of you. In the '60s it was a great
22 television star, played a bus driver. And before that he was a
23 standup comic. And his trademark was always having a cup of
24 tea. You could take a bet what was in that cup of tea. It was
25 not tea. This is tea.

F23emar4

Jury charge

1 Under New York City law Ms. Marchuk needs to show by a
2 preponderance of the evidence that Mr. Monteverde created a
3 hostile work environment for Ms. Marchuk by treating her less
4 well than other employees, even if the hostile work environment
5 was not severe or pervasive, and that he did so at least in
6 part because of her gender as a woman.

7 If you find that Ms. Marchuk was treated less well
8 than other employees and was treated that way because of her
9 gender, then you should find in favor of Ms. Marchuk on her
10 New York City claim against Mr. Monteverde. If you determine
11 that she was not treated less well, then you should find for
12 Mr. Monteverde on the New York City claim. Again, Ms. Marchuk
13 has the burden to prove that by a preponderance of the
14 evidence.

15 On the New York City claim Ms. Marchuk claims also
16 against Faruqi & Faruqi. If you find in favor of
17 Mr. Monteverde on the New York City claim, then you should also
18 find in favor of Faruqi & Faruqi. However, if you found in
19 favor of Ms. Marchuk on the New York City claim, then you must
20 determine if Mr. Monteverde was a managerial or supervisory
21 employee at Faruqi & Faruqi. In other words, Mr. Monteverde
22 can be liable to Ms. Marchuk for creating a hostile work
23 environment, even if he was not her supervisor. But if he was
24 her supervisor, then there is liability not only against him,
25 assuming Ms. Marchuk proves the case against him by a

F23emar4

Jury charge

1 preponderance, but also against the firm.

2 To determine if Mr. Monteverde was a supervisor under
3 New York City law, you should consider the amount of influence
4 Mr. Monteverde had on the firm's operations and the extent to
5 which he was able to control Ms. Marchuk's working conditions,
6 including his ability or perceived ability to hire, fire,
7 promote and affect generally pay and responsibilities of work.
8 If you find that Mr. Monteverde was a supervisory or managerial
9 employee -- that is, that Ms. Marchuk proved that by a
10 preponderance of the evidence -- then you should find in her
11 favor and against Faruqi & Faruqi on the city law claim. If
12 you find that Ms. Marchuk was not successful in proving her
13 case by a preponderance of the evidence, then you should find
14 in favor of Faruqi & Faruqi.

15 So once again, the verdict form tracks that. Question
16 three, under New York City law, has plaintiff Alexandra Marchuk
17 proved her case by a preponderance of the evidence against, A,
18 defendant Juan Monteverde? You check yes or no. Then you go
19 on to B: Against defendant Faruqi & Faruqi, LLP. Again, yes
20 or no.

21 You heard testimony in the case that when Ms. Marchuk
22 arrived at work on December 16, 2011, the morning after the
23 firm party, that she found a stain on the carpet in
24 Mr. Monteverde's office. Ms. Marchuk alleges that the stain
25 was her blood. Defendants agree that the stain was

F23emar4

Jury charge

1 Ms. Marchuk's blood. I neglected to add that stipulation to
2 the case. We'll consider that it was done.

3 What's significant here is that it's for you to
4 determine if this blood stain on Mr. Monteverde's carpet has
5 any significance with regard to the issues of this case, under
6 federal law, New York State law or New York City New York law,
7 as I've charged those issues to you.

8 I have now completed the charge with regard to the
9 alleged sexually hostile work environment under federal law,
10 state law and New York City law. Anybody need any repetition
11 or enlargement? Let me move on to the question of damages.

12 Damages arises only if the plaintiff has succeeded
13 against one or another defendant. If the answer to all the
14 questions, one, two, three, A and B, were no, you have nothing
15 more to do with regard to the issue of damages and you've
16 finished your work. If you found the answer to be yes to any
17 of the previous questions, then you go on to instruct on
18 damages.

19 Just because I instruct you on damages does not
20 suggest to you that you should find damages. Damages should be
21 found only in the case of a verdict against one or another
22 defendant.

23 (Continued on next page)
24
25

F230mar5

Charge

1 And it's subject to rules all by themselves, which I'll now
2 give to you.

3 Ms. Marchuk seeks compensatory damages for the amount
4 of income she claims to have lost, and the emotional damages
5 she claims to have suffered. She also seeks punitive damages.
6 And it's my obligation to instruct you on each of these
7 components.

8 Compensatory damages are intended to make a plaintiff
9 whole, so if she's lost anything of monetary value, because of
10 the hostile work environment as defined in any of these logs,
11 then she is entitled to recover compensatory damages to be
12 compensated against her loss. Plaintiff has to prove her loss
13 by a preponderance of the evidence.

14 In regard to emotional damages, she also has to prove
15 her loss by a preponderance of the evidence. And then she can
16 be compensated for her loss. And, again, I will have more to
17 say on this. So compensatory damages must be proved by a
18 preponderance of the evidence by proving loss.

19 There is also punitive damages, which are
20 discretionary on your part. Their purpose is to punish a
21 defendant and to deter others from committing similar acts in
22 the future. The issue of loss is not involved with punitive
23 damages. Now, in calculating damages, you do not multiply
24 according to multiple claims. The loss is individual, whether
25 it be of lost pay or emotional suffering. Just because there

F230mar5

Charge

1 are many ways to reach the issue of damage under federal law,
2 or state law, or city law, doesn't mean you add damages. You
3 focus only on loss.

4 Now one aspect of compensatory damages is what we call
5 back pay. Back pay means lost wages from the time she left
6 Faruqi & Faruqi in December 2011, until today.

7 If you find that defendants, either of them,
8 discriminated against Ms. Marchuk, she may recover back pay,
9 but only if you find that her working conditions were so
10 intolerable that a reasonable person in her position would have
11 felt compelled to resign. The law's assumption is that an
12 employee who complains of discrimination should stay on the job
13 while seeking redress, and not quit. However, if you find that
14 a reasonable person in Ms. Marchuk's position would have felt
15 compelled to resign, then she is entitled to back pay.
16 And Ms. Marchuk must prove that by a preponderance.

17 In calculating back pay, you may consider how much Ms.
18 Marchuk would have earned at Faruqi & Faruqi if she had not
19 resigned. You must also subtract from the amount she would
20 have earned at Faruqi & Faruqi, that amount which she either
21 did earn, or reasonably could have earned, through replacement
22 employment.

23 Plaintiff has a duty to mitigate or minimize her
24 damages. So if you find that Ms. Marchuk had an opportunity to
25 reduce her damages by getting another job, but unreasonably did

F230mar5

Charge

1 not take advantage of it, you should subtract the amount of
2 avoidable damages from her total. How much would she have
3 earned at Faruqi & Faruqi had she stayed on after
4 December 2011, less whatever she earned, or could have earned,
5 or should have earned, from other employment, up to today.

6 Let me use a hypothetical to illustrate. Let's say a
7 hypothetical plaintiff would have earned \$75,000 a year in
8 salary. But because of a discriminatory work environment,
9 earned nothing. And let's say she used her best efforts to
10 find a new job. If she didn't find a new job, she would be
11 entitled to the \$75,000 she lost, or a proportional part of it
12 if she worked a part of the year. If she earned nothing,
13 because she did not look for a replacement job, or unreasonably
14 turned down a job, she might be entitled to no compensation for
15 the year.

16 Let's say she found another job that paid less, let's
17 say it was at the rate of \$65,000 a year. She would be
18 entitled to 112th of the 10,000-dollar difference for every
19 month that she had a replacement job, or should have had a
20 replacement job that earned \$65,000, rather than a previous
21 salary of \$75,000. And if her new job paid her more money than
22 the previous job, she would get nothing.

23 As with all damages, you should not speculate what
24 amounts she might have earned. It is a matter of proof. And
25 as to that proof, the plaintiff has the burden of proof by a

F230mar5

Charge

1 preponderance of the evidence.

2 The next category of compensatory damages is called
3 front pay. If plaintiff proves by a preponderance of the
4 evidence that because of the damage inflicted on her she is
5 unable to work, or unable to find a job in future months and
6 years, she is entitled to recover that as a matter of front
7 pay. Front pay means lost wages in the future. Again, if what
8 she could have earned is more than what she would have earned
9 staying on at Faruqi & Faruqi, if she could earn more, she gets
10 no damage. If she earns less, there is a potential for damage.
11 And if the consequence of the injury inflicted on her is that
12 it would have no effect on her ability to get other jobs and no
13 effect on her earning power, then there is no front pay.

14 So, again, it is a matter of proof by the plaintiff,
15 by a preponderance of the evidence.

16 Plaintiff is required to prove by preponderance how
17 far into the future, if at all, she would have earned a higher
18 salary, if she had not suffered a sexually hostile or abusive
19 environment because of what the defendants did.

20 Like back pay, Ms. Marchuk may recover front pay only
21 if you find that her working conditions were so intolerable
22 that a reasonable person in her position would have felt
23 compelled to resign. If you do not find that a reasonable
24 person in Ms. Marchuk's position would have felt compelled to
25 resign, Ms. Marchuk is not entitled to front pay damages.

F230mar5

Charge

1 Front pay damages may not be speculative. You should
2 not be guessing at her earning potential. Plaintiff must prove
3 her claim to front pay damages by a preponderance of the
4 evidence. If you have to guess or speculate to do your
5 calculation, you should not award front pay damages.

6 The third category is emotional damage. Ms. Marchuk
7 is seeking compensatory damages for emotional pain and
8 suffering that she alleges proximately resulted from the
9 sexually hostile environment to which she alleges she was
10 subjected at Faruqi & Faruqi and working under Juan Monteverde.

11 Plaintiff claims that she suffered posttraumatic
12 stress disorder. Feelings of depression, anxiety, humiliation,
13 and mental anguish. These damages must be considered in
14 relation to this category of emotional damage. They are not
15 salary issues, back pay or front pay.

16 After you finish calculating your back pay and front
17 pay, you must consider emotional damage, if you consider
18 damages at all. But you shouldn't duplicate something that has
19 damage applications in more than one category.

20 Ms. Marchuk must prove by a preponderance of the
21 evidence that she suffered emotional harm as a result of the
22 alleged sexually hostile or abusive environment, and for how
23 long. The proof could be through her testimony, your
24 observations of her demeanor, you're evaluation of the expert
25 testimony, and all of the evidence of the case.

F230mar5

Charge

1 If Ms. Marchuk proved the emotional harm that she
2 suffered by a preponderance of the evidence, she is entitled to
3 damages for past, current, and future emotional harm that she
4 proves by a preponderance.

5 Calculating damages for emotional harm may be
6 difficult to do with mathematical precision. But you should
7 calculate them with as much definiteness and accuracy as the
8 circumstances permit. In calculating these damages, you should
9 consider factors such as the severity and duration of the harm
10 and its effect on Ms. Marchuk's quality of life.

11 So, to review it, on the verdict form, if all of the
12 answers to questions 1, 2, and 3 are no, you don't have to fill
13 out anything and should not fill out anything on the following
14 questions.

15 If the answer to any of these questions is yes, then
16 you go on to answer questions on pages two and three of the
17 verdict form.

18 Question four. Has plaintiff Alexandra Marchuk proved
19 by a preponderance of the evidence that she is entitled to
20 recover. The first question is back pay, yes or no. If yes,
21 fill in how much back pay. Same question with front pay, yes
22 or no. If yes, how much front pay. Third question, emotional
23 damage, yes or no. If yes, how much emotional damage.

24 Again, if all of the answers to questions 1 through 3
25 are no, you don't get into this at all. If they are yes, you

F230mar5

Charge

1 go on and answer these questions consistent with the legal
2 instructions.

3 Next category of damage, the last one, is punitive
4 damages.

5 If you find that the defendants are liable, either of
6 them, for Ms. Marchuk's injuries, then you have the discretion
7 to award punitive damages in addition to compensatory damages.

8 The intent of punitive damages is to punish the
9 defendant and to warn others not to engage in similar conduct
10 in the future. You are not required to award punitive damages.
11 They are a matter of your discretion. If you find that
12 Mr. Monteverde is liable for sexual harrassment, you may award
13 punitive damages against him, only if you determine that he
14 subjectively knew there was a substantial risk that his conduct
15 was illegal, and that he consciously disregarded Ms. Marchuk's
16 rights.

17 If you find that the Faruqi & Faruqi firm is liable
18 for sexual harrassment, you may award punitive damages against
19 the firm. But only if you find that the firm was aware that
20 Ms. Marchuk was being subjected to a sexually hostile work
21 environment, and that it did not do anything to remedy the
22 situation. You should not award punitive damages against
23 Faruqi & Faruqi if you find that it had, and that it
24 maintained, good-faith antidiscrimination policies. They must
25 both have them and enforce them.

F230mar5

Charge

1 If you determine that punitive damages are
2 appropriate, we're going to do that in a later process. The
3 verdict form asks you only if she has proved by a preponderance
4 of the evidence that she is entitled to recover punitive
5 damages. If yes, you will be asked to come back for a very
6 short proceeding, and to fix the amount on a supplementary
7 verdict sheet.

8 At this point, your answer is, yes, there should be
9 punitive damages or, no, there shouldn't be.

10 And I have just committed an error when I said has
11 plaintiff, Alexandra Marchuk, proofed by a preponderance of the
12 evidence that she is entitled to recover punitive damages. In
13 a way that is correct. But the essential point is that it's at
14 your discretion. So we'll word the question, Should Alexandra
15 Marchuk recover -- be entitled to recover punitive damages.

16 And we'll reword it accordingly.

17 That completes my instructions as to the law. And I
18 now want to talk to you about evaluating evidence.

19 Are you all right, may I continue?

20 Continue.

21 There are two types of evidence, very generally
22 speaking, direct and circumstantial. You may rely upon either
23 in reaching your decision.

24 Evidence is direct when exhibits that are admitted
25 into evidence show facts, or when the testimony sworn to by

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1 witnesses who have actual knowledge of them from something they
2 have derived from the exercises of their senses, such as
3 something they heard, something they saw, something they
4 smelled, something they touched, and so on.

5 Circumstantial evidence is evidence that tends to
6 prove a disputed fact by proof of other facts. You infer, on
7 the basis of reason and experience and common sense from an
8 established fact, the existence or nonexistence of other facts.
9 Circumstantial evidence is of no less value than direct
10 evidence. The law makes no distinction between direct and
11 circumstantial evidence. The requirement is that, from all of
12 the evidence, plaintiff has proved the case by a preponderance.

13 During the trial, you may have heard the attorneys use
14 the term inference. In their arguments, they may have asked
15 you to infer, on the bases of your reason, experience, and
16 common sense, from one or more established facts, the existence
17 or nonexistence of some other fact.

18 When you draw an inference, you conclude from one or
19 more established facts that another fact exists. And you do so
20 on the basis of your reason, experience, and common sense. The
21 process of drawing inferences from facts in evidence is not
22 guesswork. It is not suspicion. And it is not speculation.
23 An inference is a reasoned, logical deduction or conclusion
24 that the jury may draw, but is not required to draw, from the
25 facts that have been established by either direct or

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1 circumstantial evidence. Use your common sense and infer from
2 the facts that are proven whatever reasonable inferences you
3 find to be justified, in light of your common sense, logic, and
4 experience.

5 How do you evaluate the credibility or believability
6 of a witness? It's clear that witnesses said opposite things.
7 Both witnesses cannot be correct. One has to be credible, and
8 the other incredible, on the particular point that is
9 contradictory. You resolve these issues the same way you do in
10 your ordinary affairs of importance, using common sense, logic
11 and experience. There is no magic formula. No bullet which
12 allows you to press to find an answer.

13 Use the same test for truthfulness that you would use
14 in determining matters of importance in your everyday lives.
15 Ask yourself, did the witness impress press you as honest,
16 open, and candid. Or was the witness evasive and edgy as if
17 hiding something. How did the witness appear. What was her
18 bearing, behavior, manner, and appearance while testifying.
19 How responsive was the witness to questions asked. The
20 witness' testimony, was it consistent between with the direct
21 questioning and the cross-examination questioning. What
22 opportunity did the witness have to see, hear, and know about
23 the things that witness testified about? How accurate was her
24 memory. His or her candor, or lack of candor, or intelligence.
25 How did the testimony square with the testimony of others. Was

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1 it consistent or inconsistent. Did one witness corroborate
2 another, or were they talking about different things, or the
3 same things in different ways. Size up the witnesses in light
4 of the witness' demeanor, the explanations given by the witness
5 and everything else in the case, using your common sense, good
6 judgment, and life experience.

7 Few people can recall every detail of every event
8 precisely the same. Witnesses may be inaccurate,
9 contradictory, and sometimes untruthful in one particular
10 respect, yet entirely credible in other respects. It's for you
11 to determine whether the inconsistencies are significant or
12 consequential, whether they are significant or inconsequential.
13 Consider if the witnesses have discussed the facts of the case
14 in their testimony with each other, or with the lawyers before
15 appearing in court. Although there is nothing unusual or
16 improper about a lawyer's preparation of the witness before the
17 witness testifies, you can give whatever weight to that
18 preparation that you consider appropriate.

19 If you find that a witness intentionally testified
20 falsely, that's something important that you should weigh
21 carefully. If you find that a witness has willfully testified
22 falsely on an important fact, you can, if you want, disregard
23 the testimony of that witness completely, or you can disregard
24 it as to the particular point. Or, you can give it whatever
25 weight you think it is appropriate to give. You may accept or

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1 reject the testimony to whatever extent you think is
2 appropriate.

3 Some witnesses have testified in an inconsistent
4 manner about a particular point at some earlier point. And you
5 have seen this in the form of impeachment that each lawyer
6 addressed to one or another witness. If the prior inconsistent
7 statement was sworn testimony, it can be considered as
8 evidence. Similarly, if the prior inconsistent statement was
9 that of a party, it can be considered as evidence against that
10 party. Otherwise, evidence of a prior inconsistent statement
11 is not affirmative evidence, but admitted only as to the issue
12 of credibility of a witness.

13 If you find that the witness made an earlier statement
14 that conflicts with his or her trial testimony, you may
15 consider that inconsistency in deciding what credibility to
16 give to the witness' trial testimony.

17 It's your duty, and exclusively your duty based upon
18 all of the evidence and your own good judgment, to determine
19 the issues of credibility in this case. Consider everything I
20 have said but, bottom line, give the same kind of common sense,
21 logic, and experience that you use in listening to what people
22 say on any important matter in your life.

23 Some of the witnesses have been experts. A witness is
24 considered an expert if, because of education or experience,
25 the witness has acquired learning or experience in some

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1 specialized area of knowledge. A witness having that
2 qualification can give opinions as to relevant matters on which
3 they are expert. Your role in judging credibility applies to
4 experts, as well as to other witnesses. You consider the data
5 upon which the expert gave his opinion, the education or
6 experience of the witness, the consistency or inconsistency of
7 the testimony with other evidence in the case, whatever bias
8 seems to have been existing, and all of the other aspects of
9 the witness who has given expert testimony.

10 So under your oath as jurors, you have sworn to decide
11 this case fairly and impartially in accordance with the
12 evidence, and in accordance with this legal issue of burden of
13 proof by a preponderance of the evidence.

14 As you sift through the evidence, you have to ask if
15 the party with the burden of proof, in most instances the
16 plaintiff, has proved her claims against one or another
17 defendant by a preponderance of the evidence. You should not
18 apply bias, prejudice, or sympathy. They are not part of this
19 case. It's the evidence itself, and not any attitude of bias,
20 prejudice, or sympathy that has to control. It would be
21 improper for you to consider your personal feelings about the
22 personal characteristics of any of the parties or the lawyers.

23 Race, religion, national origin, sex, age, all of
24 these are improper considerations. The parties in the case are
25 entitled to a trial free from prejudice, bias, or sympathy.

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1 Our judicial system cannot work unless you reach your verdict
2 through a fair and impartial consideration of the evidence.
3 Your verdict must be based exclusively upon the evidence, or
4 lack of evidence.

5 The attorneys have a duty to argue persuasively on
6 behalf of their clients, to object to evidence they feel is
7 improper, and to make appropriate arguments. They have the
8 right to ask me to make rulings of law. They have the right to
9 ask for conferences at the sidebar and out of the hearing of
10 the jury. Generally, they have the right to advocate,
11 zealously and as persuasive as they can, the positions of their
12 clients. You should not show any prejudice against an attorney
13 or his client because of any objections or arguments made by
14 that attorney.

15 You may have observed that sometimes I sustained
16 objections and sometimes I did not. My rulings on these kinds
17 of questions are of no concern to you, and have nothing to do
18 with your job in evaluating the merits, and should be
19 disregarded.

20 It's the duty of the attorneys to press their
21 positions. It is my function to cut off counsel from improper
22 or redundant lines of arguments or questioning. But what I
23 rule on, or what they may have done that is subject to
24 objection, is of no concern to you. It does not affect the
25 merits in any way.

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1 You may have observed that sometimes I asked questions
2 of witnesses. My questions are of no more or less importance
3 than the questions asked by the attorneys. I ask questions
4 because I think a particular point needs to be elaborated on
5 because I sense that one or more of you may want more
6 information.

7 But because I asked a question, is not a relevant
8 concern. It is the answers that the witnesses give to whatever
9 question is put to them. As long as the question is admissible
10 and the answer is responsive, it is evidence.

11 In determining the facts, rely upon your own
12 recollection of the evidence. What the lawyers said about the
13 evidence in their opening or closing statements, or what I
14 said, is not evidence. Only the witness' answers to relevant
15 questions is evidence. And if there is any doubt, and you
16 can't resolve it according to your own recollections, you can
17 ask that the record be reread or copied and put before you.

18 We have given each of you notebooks. Some of you have
19 taken notes, some copiously. Others, have not. The notebooks
20 are there for your personal use only. You cannot prove a point
21 to another juror by looking at your own notebook. What your
22 own notebook does is to help you refresh your own recollection
23 and is not to be used as argument to one another. If you have
24 any doubt as to the testimony, you may ask for the portion of
25 the trial transcript to be found and made available to you.

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1 Please continue your deliberations. Sometimes it
2 takes some time, and sometimes we have to resolve various
3 arguments with the lawyers as to what is relevant to your
4 questions.

5 Your verdict must be unanimous. Whatever your verdict
6 is, it must be unanimous. Each juror is entitled to his or her
7 opinion. Each should, however, exchange views with fellow
8 jurors, for that is the very essence of jury deliberation, to
9 discuss and consider the evidence, to listen to the arguments
10 of fellow jurors, to present your individual views, to consult
11 with one another, and to reach agreements based solely and
12 wholly on the evidence.

13 Each of you must decide the case for yourself, after
14 consideration and hearing the arguments of the other jurors.
15 But each of your verdict, is a matter of your conscience. And
16 you must satisfy your own conscience. You should not hesitate
17 to change an opinion if, after discussion with your fellow
18 jurors, their view appears to be correct and yours does not.
19 Again, that is the very purpose of deliberations, persuasion
20 one of the other. But if after carefully considering all of
21 the evidence and the arguments of your fellow jurors, you
22 entertain a conscientious view that differs from the others,
23 you should stick to your conscientious conviction, and not
24 abandon it simply because you're out numbered. It's a matter
25 of logic, argument, proof, and honest persuasion, one to the

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1 other. Every juror counts the same. There is no monopoly on
2 knowledge. Good sense and judgment comes in every department
3 of life. An advanced degree is no guarantee of good sense and
4 judgment. Each juror is entitled to present his or her own
5 view, and must be listened to respectfully by the others.

6 Your final vote must reflect your conscientious
7 conviction as to how the issues should be decided. Your
8 verdict, whether liable or not liable, must be unanimous.

9 You begin deliberating when all eight of you are
10 present and able to listen to each other's point of view.
11 Those who have made notes may consult them, but not use them to
12 prove a recollection or another point to another juror.

13 And, please, don't show your notes to any other juror.

14 The notes are your personal notes. They are not to be
15 shared with anyone else. As I said, if there is doubt as to
16 what a witness said, and your respective recollections are not
17 sufficiently helpful, you have a right to ask for that
18 testimony to be reread. The foreperson should send me a note,
19 dated and with a time affixed to it, describing the particular
20 question or the particular item of testimony you wish to
21 rehear. I'll ask the reporter to locate it. We'll copy it.
22 I'll resolve it with the lawyers and pass it to you. And since
23 that usually takes some time, please continue your
24 deliberations.

25 If you send me notes, please make sure that you do not

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1 indicate what any of you are thinking, or what your preliminary
2 votes are, or who may be recalcitrant, or anything else that is
3 private to you. I do not enter your deliberations. They are
4 yours. You have to be open and candid with each other, and
5 trust that no one, in any later point in time, will compromise
6 the privacy and autonomy of your deliberations.

7 The lawyers will each assemble the exhibits. They'll
8 do it together. And they'll be available for you if you ask
9 for them. We'll keep them here. And if you ask for a
10 particular exhibit, we'll send the exhibit to you.

11 When you reach a verdict, send me a note that you have
12 reached a verdict. Don't send out the verdict form. Just send
13 me a note that you have reached a verdict. You will come in in
14 open court. And you'll then deliver the verdict to Ms. Jones.
15 I'll inspect it, and give it to the foreperson, and it will be
16 read, and then inspected in open court.

17 The habit of this Court is that juror number, Mr.
18 Knight will be the foreperson. But it is a matter of your
19 vote. If Mr. Knight does not want to serve as the foreperson,
20 and somebody else does, or for any other reason, the jury can
21 select its own foreperson. In absence of selection, juror
22 number one, Mr. Knight, will be the foreperson.

23 The job of the foreperson is to make sure that every
24 juror has the same right as any other juror to express his
25 opinion, and to find a respectful audience. Your job is to

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1 deliberate. And the foreperson's job is to help that
2 deliberation. His view has no greater weight than any other
3 juror's point of view.

4 Please sit a moment. I want to see if the lawyers
5 have any comments to make, and then we can start deliberations.

6 Sidebar, please.

7 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Mr. Lipman?

3 MR. LIPMAN: No comments.

4 THE COURT: Mr. Bursor.

5 MR. BURSOR: No comments.

6 THE COURT: Thank you.

7 We have slightly revised the verdict form in the way I
8 told the jury.

9 Show it, please.

10 (Verdict form presented)

11 MR. LIPMAN: Just to the last question; is that right?

12 THE COURT: Yeah, right.

13 MR. LIPMAN: Fine.

14 THE COURT: Okay.

15 (Continued on next page)

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1 (In open court)

2 THE COURT: The lawyers have no comments to make.

3 Ms. Jones will now give you the revised verdict form
4 which the lawyers have reviewed and have no comment on.

5 Use your notepad for any notes. Make sure there is
6 nothing on them.

7 And there are envelopes that will be given. Please
8 give it to Mr. Knight.

9 Ms. Jones will now swear the Court Security Officer.

10 Pay attention to the oath.

11 (Court Security Officer, sworn)

12 THE COURT: Members of the jury, it's now quarter to
13 four. When you go back, please decide who will be the
14 foreperson, send it out in a note. And then let me know how
15 long you want to go today. You can deliberate for an hour. I
16 think that might be a good idea. If you are worn out, let me
17 know that.

18 In any event, we'll continue 10:00 tomorrow. Is that
19 good?

20 JUROR: Fair.

21 THE COURT: Okay. The jury may retire to begin their
22 deliberations.

23 (Jury excused to deliberate upon its verdict)

24 THE COURT: Okay.

25 (Adjourned until Wednesday, February 4, 2015 at 10:00
a.m.)

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